No. 108.

Brief of Perry for P. in E.

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In the Supreme Court of the United States.

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THE CAPITAL TRACTION COMPANY, Plaintiff in Error,
vs.
CHARLES HOF.

BRIEF FOR PLAINTIFF IN ERROR.

B. ROSS PERRY,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

I.

CONCISE STATEMENT OF THE CASE.

This is a writ of error to the Court of Appeals of the District of Columbia. On September 8, 1896, the plaintiff in error, a body corporate by virtue of an act of Congress, doing business in the District of Columbia, filed in the Supreme Court of that District a petition, praying that a writ of *certiorari* should issue from said court to Lewis I. O'Neal, a Justice of the Peace in said District. (R. 1.) The main fact set forth in this petition, in support of the prayer for the issuance of the writ of *certiorari*, was that the petitioner had been sued by the present defendant in error before the said Justice of the Peace in a plea of damages of $300, and that a jury trial of the issue joined in that case had been demanded by the plaintiff therein. The petitioner further averred that, under the provisions of Article VII of the Amendments to the Constitution of the United States, it was entitled to a jury trial according to the course of the

common law, and that no such trial could be had before a Justice of the Peace in the District of Columbia. The writ of *certiorari* was prayed in order that such trial might be had in the Supreme Court of the District of Columbia, and there was also the prayer for other and further relief. (R. 1–4.)

Upon the filing of this petition Mr. Justice Cox ordered the writ to issue. (R. 4).

To this writ the justice of the peace made his return, showing the pendency of the suit before him for $300 damages, the summons thereon to the defendant therein, the joinder of issue by the parties litigant, the demand of a jury by the plaintiff therein, and the service of the writ of *certiorari*. (R. 5, 6).

On September 11, 1896, the respondent Hof moved to quash the writ upon the return filed. (R. 6).

On October 7, 1896, Mr. Justice Cox after argument overruled this motion, and quashed all proceedings before the justice of the peace subsequent to issue joined. (R. 6).

From this order the respondent prayed an appeal to the Court of Appeals of the District of Columbia. (R. 7).

This appeal was heard by that court on November 5, 6, 1896. (R. 8).

On February 17, 1897, a majority of that court (Morris and Shepard, JJ.) filed an opinion sustaining the validity of a jury trial before a justice of the peace in the said District. (R. 9–26). Mr. Chief Justice Alvey filed a dissenting opinion (R. 26–34). The court united in an order reversing that of Cox, J., under review, Alvey, C. J., holding that an appeal lay from the verdict of a jury in a justice's court, and that the petitioner could have his constitutional rights protected upon such appeal to the Supreme Court of the District of Columbia.

This order overruling Cox, J., and directing the writ of *certiorari* to be quashed was made on February 17, 1897. (R. 34).

On February 25, 1897, the petitioner prayed for a writ of error to this court upon the said order. (R. 34).

The Court of Appeals reluctantly denied the writ on March 9, 1897. (R. 35).

Whereupon a petition was filed in this court for allowance of the writ of error (R. 36), and it was allowed on April 3, 1897. (R. 37).

II.

ASSIGNMENT OF ERRORS.

1. The Court of Appeals erred in reversing the judgment of Cox, J., refusing to quash the writ of *certiorari* in question, and in quashing the said writ.

2. The Court of Appeals erred in holding that there can be a lawful trial by jury in a civil action before a justice of the peace in the District of Columbia.

3. The Court of Appeals erred in holding that a justice of the peace in the District of Columbia has jurisdiction to hear and decide any suit at law involving more than $20.

4. The Court of Appeals erred in holding that proceedings before a justice of the peace in the District of Columbia, in a suit at law involving more than $20, are or can be according to the course of the common law.

5. The Court of Appeals erred in holding that there can be no appeal to the Supreme Court of the District of Columbia from the judgment of a justice of the peace in said District, in a case tried by jury before said justice.

III.

STATEMENT OF POINTS OF LAW AND OF FACTS TO BE DISCUSSED IN ARGUMENT.

Narrative of Relevant Matter.

Shortly after the Constitution of the United States was adopted there was enacted in Maryland the Act of Assembly

of 1791, Ch. LXVIII, entitled: "An Act for the recovery of small debts out of court, &c."

2 Kilty's "Laws of Maryland."

This act authorized one justice of the peace in each county, in all cases where the amount in controversy did not exceed ten pounds current money, "to try, hear and determine" the matter, and to give judgment according to the laws of the land, *and "the equity and right* of the matter."

When in 1801 (February 27) Congress was providing for the administration of justice in the District of Columbia it enacted generally that all laws of the State of Maryland should continue in force in that part of the District which had theretofore constituted a portion of that State, and it enacted similarly with respect to the laws of Virginia as applying in that portion of the District derived from the latter State.

2 Statutes at Large, pp. 103, 104.

But when it came to consider the Maryland Act of 1791, cited, and the provisions of law applying in Maryland for the collection of small debts, it was confronted by the absolute language of the Seventh Amendment to the Constitution of the United States, and it made this significant provision:

> "and they [justices of the peace] shall have cognizance in personal demands to the value of *twenty dollars*, exclusive of costs; *which sum they shall not exceed, any law to the contrary notwithstanding.*"
>
> 2 Statutes at Large, p. 107.

On March 3, 1823, Congress passed an act entitled:

> "An act to extend the jurisdiction of justices of the peace, in the recovery of debts, in the District of Columbia."

The circumstances attending the passage of this act will be recurred to.

It provided that—

> "in all cases where the real debt and damages do not exceed the sum of $50, exclusive of costs, it shall and may be lawful for any one justice of the peace . . . to try, hear and determine the matter in controversy and . . . to give judgment according to the laws existing in the said District of Columbia, *and the equity and right of the matter*, in the same manner, and under the same rules and regulations, to all intents and purposes, as such justices of the peace are now authorized and empowered to do when the debt and damages do not exceed the sum of $20, exclusive of costs."
>
> 3 Statutes at Large, p. 743.

Section 6, of the same act takes away from the Circuit Court of the District of Columbia (the predecessor of the present Supreme Court of the District of Columbia), original jurisdiction in all cases of debt or damage not exceeding $50, exclusive of costs.

Section 7 gives a right of appeal to the circuit court in all cases where the debt or demand exceeds the sum of $5.

Section 15 gives the right of jury trial before the justice of the peace upon the demand of either party to the controversy, when the sum in controversy exceeds $20.

By Act of Congress of February 22, 1867, this jurisdiction was increased to $100.

> 14 Statutes at Large, p. 401.

At present, by Act of Congress of February 19, 1895, the limit of this jurisdiction is $300.

> 28 Statutes at Large, p. 668.

The provisions of the act of 1823 have been substantially incorporated in sections 1000–1021, R. S. D. C.

This act of 1823 soon became the subject of adjudication in the old Circuit Court of the District. Its judicial history is well given by Mr. Justice Morris (R., 9) as follows:

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tice of the peace. This cause has been tried by jury before the justice; and, by the rules of the common law, it can not be re-examined by a jury in any other court, nor by the judges without a jury."

"Mr. Chief Justice Cranch added for himself the following: 'A writ of error, upon a bill of exceptions, will only lie to a court of record. The proceedings of courts not of record can, by the common law, only be brought up by *certiorari*, if brought up at all, and not by appeal.'

"And with regard to the constitutional question raised, he said 'that if the judge was such a judge of an inferior court of the United States as is intended by the third Article of the Constitution of the United States, the same article fixed the tenure of his office; and it could not be altered by an act of Congress; and that if he was not such a judge, then the argument from the Constitution did not apply to his case.'

"The next case, that of Maddox *vs.* Stewart, 2 Cranch C. C. 523, followed soon afterwards, and at the same term of the court. It was likewise an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury. The report merely states that 'the court (the same justice dissenting who had dissented in the previous case) dismissed the appeal upon the ground that a fact once tried by a jury can not be re-examined otherwise than according to the rules of the common law.'

"The case of Denny *vs.* Queen, 3 Cranch, C. C. 217, followed in the year 1827. Here also was an appeal from a judgment of a justice of the peace, rendered in pursuance of the verdict of a jury. It seems that 'a paper was sent up purporting to be a prayer to instruct the jury as to the law arising upon certain facts therein stated, but which was not certified as a bill of exceptions.' The action of the court thereon is thus stated:

"'The court (*nem. con.*) said that as the court had heretofore decided that, when a cause had been tried by a jury before a justice of the peace we could not constitutionally try the cause again by a jury in this court and the court could not try it without a jury,

"Very soon after the passage of the Act of March 1, 1823—in fact, in the very same year—its scope and construction became the subject of judicial investigation; and five cases are found in the old Circuit Court Reports wherein the effect of the statute was sought to be ascertained.

"In the first of these cases, which was that of Sherburne *vs.* Semmes, 2 Cranch C. C. 446, there was an appeal from a judgment of a justice of the peace rendered in pursuance of the verdict of a jury, and one of the questions now before us was directly presented. Having doubt as to its jurisdiction, the court continued the case for argument. But there is no further mention of it in the reports, and it seems never to have been taken up again. The notice of the case is very brief; and we find in it neither argument of counsel nor any opinion by the court.

"In the next year (A. D. 1824) the case of Davidson *vs.* Burr, 2 Cranch C. C. 515, came before the court on a similar appeal, under similar circumstances. The case seems to have been fully argued, although the report of it, like most of the reports in Cranch, is exceedingly brief, and confined to a statement of the point decided. 'It was objected that a justice of the peace trying causes by a jury was a judge of an inferior court of the United States, and, therefore, ought to be appointed *quamdiu se bene gesserit*; and, not having been so appointed, but holding his office only for five years, he was not a competent judge, and had no jurisdiction of the cause. It was also suggested that a cause once tried by a jury could not at common law be tried again by jury in another court; nor could the fact be tried again by the court.' The report goes on to say that 'the court (one of the three justices, however, dissenting) was of the opinion that the justice had jurisdiction; but that under the Seventh Amendment of the Constitution of the United States, which declares that in suits at common law no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law, there can not be a trial by jury in this court of a cause which has been tried by a jury before a jus-

there was not left for this court upon the appeal anything but the law of the case, as it appeared before the justice; but the act has not prescribed the mode by which the question of law should be made to appear to this court. It certainly was not now regularly before the court.' And the appeal was dismissed.

"Induced, probably, by an apparent reservation in the last sentence of the foregoing opinion, another, and, it would seem, a final attempt was made to sustain an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury in the case of Smith *vs.* Chase, 3 Cranch C. C. 348, in the year 1828. Here, at the trial before the justice of the peace, 'the defendant tendered a bill of exceptions to an opinion of the justice upon a point of law, which the justice refused to sign;' and there was a motion made to compel him to sign it. But the court (one of the justices, however, doubting, but not dissenting) held that a writ of error would not lie to the judgment of a justice of the peace upon the verdict of a jury, and that he was not bound to sign a bill of exceptions; and accordingly the motion was overruled.

"In an able and elaborate opinion filed in this cause by Mr. Chief Justice Cranch—for himself, alone, however, as he takes pains to say, and not for the court, or even for the majority of it—the questions at issue, apparently for the first time in the history of this litigation, are discussed at length; and to this opinion, as the subsequent practice for nearly seventy years seems to have been based upon it, we will have occasion to refer in the sequel.

"We have no record of any further agitation of the subject for about fifty years. But in the year 1876, the question of the right of appeal in such cases was raised again in the Supreme Court of the District of Columbia in the case of Fitzgerald *vs.* Leisman, 3 MacA. 6; but it was speedily disposed of on the authority of the cases above cited from Cranch's Reports and in accordance therewith. Now, again, the question is raised in a new shape, and it must be confessed under a new light; and the great enlarge-

ment of the jurisdiction of the justices by the Acts of Congress of 1867 and 1895, and the greater frequency of recourse to trial by jury for determination of the issues made before them, give enhanced importance to the controversy."

On June 17, 1896, a petition was filed before Bradley, J., by the Brightwood RR. Co., praying for the issuance of a writ of *mandamus* to compel a justice of the peace to approve an appeal bond in a case where a trial by jury had been had before the justice. Mr. Justice Bradley denied the prayer of the petition, saying that he felt bound by the decisions above cited, but at the same time delivering a strong and trenchant opinion against their reasoning, and suggesting that a reconsideration of the important questions involved ought to be had.

24 Wash'n Law Reporter, 406.
Appendix to this Brief, 1–7.

On October 6, 1896, Cox, J., delivered his opinion in the case at bar, refusing to quash the writ of *certiorari*.

24 Wash'n Law Reporter, 646.
Appendix, 7–17.

On November 3, 1896, Bradley, J., in the case of Jacob H. Kengla *vs.* Roland C. Booth, At Law, No. 40,356, upon *certiorari*, quashed certain proceedings before a justice of the peace, on the broad ground that justices of the peace in this District have no jurisdiction in actions at law involving more than $20.

24 Wash'n Law Reporter, 715.
Appendix, 18–24.

The opinion of the majority of the Court of Appeals in the case at bar (R. 9–26), holds that a justice of the peace has such jurisdiction, and that there is no appeal from the judgment of the justice entered upon the verdict of a jury.

The opinion of Mr. Chief Justice Alvey (R. 26–34), holds that the justice has jurisdiction, but that an appeal will lie from his judgment even where that judgment has been entered upon such verdict.

To resume:

The justices of the old Circuit Court held that a justice of the peace had jurisdiction to try suits at law involving more than $20 and not more than $100, and that where a jury trial was had in such suit no appeal lay to a higher court, nor could the justice instruct the jury on matters of law, nor set aside their verdict and grant a new trial.

Mr. Justice Bradley holds that a justice of the peace, in the District of Columbia, has no jurisdiction in any suit at law involving more than $20, because any party to such suit has a constitutional right to a jury trial of his cause according to the course of the common law, and such trial can not be had before such justice of the peace.

The majority of the Court of Appeals (Morris and Shepard, JJ.), hold that such trial can be so had, and that no appeal will lie from the justice's judgment upon the verdict, because a fact so found can not be re-examined under the present state of the law. They further hold that the justice of the peace has authority to instruct the jury on questions of law and to set aside their verdict and grant a new trial.

Mr. Chief Justice Alvey and Mr. Justice Cox agree with Mr. Justice Bradley as to his main contentions, but they hold that an appeal can be taken and a common law trial thus secured; that for this reason the law is not unconstitutional.

Justices Morris and Shepard agree with Mr. Justice Bradley in holding that the law in question is plainly unconstitutional unless the trial before the justice of the peace is a jury trial according to the course of the common law.

But all of the justices of the Court of Appeals and Justices Cox and Bradley agree that the decisions of the old circuit court, the opinion of Cranch, C.J., and the acquiescence for nearly a century in that opinion are erroneous.

That opinion is as follows (R., 17):

> "It will be perceived that upon a demand of trial by jury the cause is taken entirely out of the hands of the justice. He is obliged to summon and swear the jury and to render judgment according to their verdict. No authority is given to him to instruct the jury upon matter of law or fact, nor to set aside their verdict and grant a new trial. It seems to me that he acts as ministerially in entering the judgment upon the verdict as the clerk of this court does in entering its judgments. The jury are not bound by the opinions of the justice upon matters of law; nor do I perceive that he has a right to say what evidence they shall hear. If they disregard his opinion as to the law, or hear evidence which he disapproves, no new trial can be granted. They are to try the matter in difference between the parties, whether it be a matter of law or a matter of fact. The jury seems to be a complete susbtitution for the justice as to the trial of the cause. If a jury be not required by either party the justice is to decide the fact as well as the law. If a jury be demanded, they are to decide the law as well as the fact."

Of this opinion the Court of Appeals say (R., 17):

> "If this theory of the power and functions of the jury authorized to be summoned by the justice of the peace, under the act of 1823, be correct, that jury is an irresponsible mob, and not a jury of the common law. It is simply a body of compulsory triers or referees, the abnormal creation of an abnormal statute, and not the jury required by the Constitution, and to whose determination of questions of fact the Constitution gives the attribute of finality. But we fail to find any support of this theory either in the act itself or in any subsequent legislation on the subject."

It is thus manifest to this court how important are the questions here involved, and how great is the uncertainty with respect to them which this court must put at rest.

It will be maintained that justices of the peace in the District of Columbia can not be constitutionally empowered to determine suits at law involving more than $20.

A.

Of what nature is the civil jurisdiction of a justice of the peace?

It seems to have been assumed, both in the argument of counsel below and in the opinions of the courts, that light would be thrown upon the nature of this jurisdiction in this District by an inquiry concerning the origin of the office of justice of the peace and his jurisdiction by statutory law in England. But this is a mistake. There can be no question that the function of a justice of the peace, from the time of the creation of the office down to the present period in England, has been that of a conservator of the peace.

Bacon's Ab., Tit. Justice of the Peace.
Burn's Justice *passim.*
4 Inst. 170.

The true source of the civil jurisdiction which justices of the peace commonly exercise in the United States is to be found in what were called the Courts of Requests, or Courts of Conscience, for the recovery of small debts, established by Statute of 3 Jac. I, Ch. 15, in the City of London.

In the case of Johnston *vs.* Nelms, 21 Ga. 192, it is said that "the justice courts throughout the several States correspond, to a great extent, to the courts of conscience." The most instructive passage upon the subject is found in the third book of Blackstone's Commentaries, page 81, from which we cite as follows:

> "The proceedings in these special courts ought to be according to the course of the common law, unless otherwise ordered by Parliament; for, though the King may erect new courts, yet *he can not alter the established course of law.*

"But there is one species of courts, constituted by Parliament in the City of London, and other trading and populous districts, which in their proceeding so vary from the course of the common law that they may deserve a more particular consideration. I mean the courts of requests, or courts of conscience, *for the recovery of small debts.* The first of these was established in London, so early as the reign of Henry VIII, by an act of their common council; which, however, was certainly insufficient for that purpose, and illegal, till confirmed by Statute 3 Jac. I, Ch. 15, which has since been explained and amended by Statute 14 George II, Ch. 10. The constitution is this: Two aldermen and four commoners sit twice a week to hear all causes of debt *not exceeding the value of forty shillings*; which they examine in a summary way, by the oath of the parties or other witnesses, and make such order therein as *is consonant to equity and good conscience.* The time and expense of obtaining this summary redress are very inconsiderable, which make it a great benefit to trade; and thereupon divers trading towns and other districts have obtained acts of Parliament for establishing in them courts of conscience upon nearly the same plan as that in the City of London.

"The anxious desire that has been shown to obtain these several acts, proves clearly that the nation in general is truly sensible of the great inconvenience arising from the disuse of the ancient county and hundred courts; wherein causes of this small value were always formerly decided, with very little trouble and expense to the parties. But it is to be feared, that the general remedy which of late hath been principally applied to this inconvenience (the erecting these new jurisdictions) may itself be attended in time with very ill consequences; as *the method of proceeding therein is entirely in derogation of the common law*; as their large discretionary powers create a petty tyranny in a set of standing commissioners; and as the disuse of the trial by jury may tend to estrange the minds of the people from that valuable prerogative of Englishmen, which has already been more than sufficiently excluded in many instances."

It will be specially noted hereafter that the proceedings of these courts of conscience are directly antagonistic to the course of the common law. At present attention is called to the fact that these proceedings are not according to the common law.

The jurisdiction of a justice of the peace only embraced cases that were too small to be thought worthy of the protection of the law of the land. This jurisdiction was an application of the legal maxim *de minimis non curat lex*. In order to estimate the full force of this we must advert to the administration of justice in England prior to the Norman Conquest. The jurisdiction of the Anglo-Saxon courts was local. Justice was administered at every man's door by the local tribunal. The county court was the great unit of jurisdiction and of judicial administration. Inferior to that were the courts baron and the hundred courts, both of which were local and administered local law. The principal effort of William the Conqueror was, while not overthrowing the local courts, to nevertheless draw causes away from them to his royal court. This he accomplished by the use of the royal original writ; and in process of time, as we know, the royal courts assumed almost the entire jurisdiction of causes throughout the realm. In these royal courts the king's justice was administered, and that was the justice that ultimately became the law of the land. It was in the king's courts, and by means of the use which was made by Henry II of the Norman inquisition, that the trial by jury was established. So that, during the centuries, the course of the common law came to mean the trial of the subject's cause by jury in the king's courts and under the direction of the king's judges. Outside of this justice, as of too small importance to be included within it, were these matters of small debts. The limit came to be established at forty shillings; if more than that sum was demanded, justice had to be sought in the king's courts through the king's original writ, and the king's law was there administered by the king's judges and

the king's jurymen. If the debt sought was below that sum, then the common law did not deal with it at all. It was so inconsiderable a thing that it was turned over to such remedies as existed outside of the common law. These remedies were at first the court baron, the hundred court and the county court. After they fell into disuse the special courts referred to by Blackstone were created by act of Parliament for the purpose, and there were established in the city of London the Courts of Conscience for the recovery of small debts.

Bigelow's History of Procedure in England, Chaps. 3, 4.

Inderwick's "The King's Peace."

Pollock & Maitland's History of English Law, Book 2, Chap. 9.

In Maryland, from which State we derive our justices of the peace, the very expression "small debts" has been conserved, as also the admonition to decide according to the laws of the land and the *equity and right of the matter.* It is said in a work of great authority in that State (Latrobe's Justice, p. 49):

> "Although the expression small debts appears at first sight to be rather indefinite, yet by various legislative enactments a precise meaning has been given to it, and it now means all debts which may be recovered before a justice of the peace."

The act cited of the General Assembly of Maryland, 1791, Chap. lxviii, is entitled "An Act for the Speedy Recovery of Small Debts out of Court." And section 1 of the act goes on to provide that such debts, where the debt and damages do not exceed ten pounds, current money, shall be heard before one justice of the peace.

There are other acts of the General Assembly referring to the same subject, but it is not necessary to cite them. It has been explicitly decided by the Court of Appeals of Mary-

land that at common law justices of the peace were merely conservators or keepers of the peace, and although the legislature has conferred upon them limited jurisdiction in civil and criminal cases, *the office itself has never been considered a court of law.*

Weikel *vs.* Cate, 58 Md. 105.

Up to this point we may fairly claim to have established that in Maryland the proceedings of a justice of the peace are not according to the course of the common law, and that the jurisdiction exists only for the recovery of *small debts out of court.*

B.

What are *small debts ?*

In England they were debts not exceeding forty shillings.

In Maryland, at about the time of the adoption of the Constitution of the United States, they were debts not exceeding ten pounds, current money, equal to a little less than $30.

Act of 1771, Chap. 16, 1 Kilty.

But, whatever they may be elsewhere, in this District they are debts not exceeding $20.

This is absolutely established by the words of the Seventh Amendment to the Constitution of the United States.

Any suit involving a sum in excess of this limit must be tried in the due course of the common law and by a common law jury if such trial be demanded.

But this very characteristic excludes the definition of a *small debt,* for such debt was one recoverable outside of the course of the common law.

In States whose constitutions do not fix *small debts* by a mathematical standard, the definition of the term may not be inflexible. The legislatures of such States may be able to

say that what was once considered a large debt has become, through the growth of commerce and of wealth, so insignificant as to be properly designated as a small debt. But Congress can not say this. The framers of the Seventh Amendment thought the matter of so grave import that they would not leave it to a sliding scale to be operated by the National Legislature. They said that any citizen who had a claim involving more than $20 should have the right to *the law of the land*. And so the law must remain until the Constitution shall have been altered. No matter how poor a man may be, he is entitled to the course of the common law where his claim is worth it, and his claim is worth it if it involves more than $20. The legislature of New York or of any other State may put the price higher, but the Constitution puts it just there, and it calls a claim for more than $20 a small or petty debt.

C.

Having, as we think, established the fact that the jurisdiction of a justice of the peace is not exercised according to the common law, we come to the question whether or not a common law jury can be constitutionally assigned by Congress to a justice's court. And we will proceed to consider in detail the constitutional objections which exist to such a course.

Article 7 of the Amendments to the Constitution of the United States provides as follows:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

The meaning of the controlling words of this Amendment has been determined by sundry decisions of this Court.

The amendment refers in terms to "suits at common law." The first question, therefore, to be asked is, what are suits at common law?

This question is answered by Mr. Justice Story, delivering the opinion of the Supreme Court of the United States in the case of Parsons *vs.* Bedford, 3 Peters, 446. At page 447 he uses this language:

> "The phrase 'common law' found in this clause, is used in contradistinction to equity, and admiralty and maritime jurisprudence. The Constitution had declared, in the third article, 'that the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority,' etc., and to all cases of admiralty and maritime jurisdiction. It is well known that in civil causes in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases, to inform the conscience of the court. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved, in suits at common law, the natural conclusion is that this distinction was present to the minds of the framers of the amendment. By common law, they meant what the Constitution denominated in the third article, '*law*;' not merely suits, which the common law recognized among its old and settled proceedings, but *suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered;* or where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit. . . . Proceedings in cases of partition, and foreign and domestic attachment might be cited as examples variously adopted and modified. In a just sense, the amendment, then, may well be construed to embrace all suits, which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they assume to settle legal rights."

In the case of the Justices *vs.* Murray, 9 Wallace, p. 227, Mr. Justice Nelson, delivering the unanimous opinion of the court, confirms this reasoning.

In a very recent case, decided by the Supreme Court of the United States, it was held that the words in question embrace a proceeding by the State under its power of eminent domain.

> Chicago, Burlington, etc., RR. *vs.* Chicago, 166 U. S. 226. (See opinion of Harlan, J., pp. 242–246.)

Mr. Chief Justice Marshall, speaking for the Supreme Court in the case of Weston *vs.* The City of Charleston, 2 Peters, 464, thus defined the term "suit":

> "The term (suit) is certainly a very general one, and is stated to apply to any proceedings in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him. The modes of proceeding may be various; but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit."

This language is quoted with approval by Chief Justice Taney in the case of Holmes *vs.* Jennison, 14 Peters, 567.

A very instructive opinion in this connection is that of Mr. Justice Bradley in Upshur County *vs.* Rich, 135 U. S. 467. At page 477 the learned justice says:

> "The principle to be deduced from these cases is that a proceeding, not in a court of justice, but carried on by executive officers in the exercise of their proper functions, as the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character and can not, in any just sense be called a suit; and that an appeal in such a case to a board of assessors or commissioners having no general powers, and only authorized to determine questions of quantity, proportion and value, is not a suit; but that such an appeal may become a suit, if made to a court or tribunal having

> power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and on the other."

If the proceeding in question be a suit, then from the fact that the verdict of a jury is involved in it, *upon which verdict judgment in accordance therewith must be entered*, it would seem to be beyond question that such proceedings are a suit at law as opposed to a proceeding in equity. Certainly the rights which are asserted are legal and not equitable rights.

Strongly in point are the following words of Mr. Justice Field delivering the opinion of this court in the case of Scott *vs.* Neely, 140 U. S. 106:

> "*All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for a breach of a simple contract, or as damages for injury to person or property are legal actions, and can be brought in the Federal courts only on their law side. Demands of this kind do not lose their character as claims cognizable in the courts of the United States only on their law side, because in some State courts, by virtue of State legislation, equitable relief in aid of the demand at law may be sought in the same action. Such blending of remedies is not permissible in the courts of the United States.*"

It would seem, then, to be beyond question that a proceeding whereby a sum of money is demanded by one person from another as damages for a wrong alleged to be inflicted by the latter upon the former, is a suit at law within the meaning of the Seventh Amendment of the Constitution.

Such being the case, it follows from the words of the amendment that it must be tried by a jury, and it is conceded by every one that this means a common law jury. (R., 16, 30.) That this jury can only sit in a court which administers the common law, in which a case is tried according to the common law, would seem to be equally plain. The language of this amendment is that no fact tried by a jury shall be

otherwise re-examined in any court in the United States than according to the rules of the common law. If it is to be re-examined according to such rules, it would seem to follow that the fact must have been tried according to those rules.

D.

Recurring, however, to the admitted fact that the trial must be had by a common law jury, we are led to ask: In what does a common law jury consist? This question has been most admirably answered by Mr. Justice Cox (Appendix, 8–15).

> "By the Act of February 27, 1801, by which Congress assumed jurisdiction over this District, justices of the peace were given cognizance of personal demands to the value of twenty dollars.
>
> "By the Act of March 1, 1823, their jurisdiction was extended to cases involving fifty dollars. And here Congress was confronted with the Seventh Amendment to the Constitution guaranteeing the right to trial by jury in controversies involving more than twenty dollars. Accordingly, the 15th and 16th sections of the act are an attempt to reconcile the summary jurisdiction of the justice with the constitutional requirement. Whether it was a success is a question of no little gravity and importance.
>
> "The Seventh Amendment to the Constitution reads as follows:
>
> "'In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.'
>
> "I am not aware of any decisions in the Federal courts that throw any light on the questions presented in the present proceeding. But the State constitutions contain provisions similar to, and almost identical with, the Seventh Amendment,

which have been the subject of discussion and construction in the State courts.

"Thus, in Murphy *vs.* People, 2 Cow. 815, decided in 1824, it was held that a constitutional provision that 'the trial by jury *in all cases in which it has been heretofore used*, shall remain inviolate *forever*,' secured the right *as it existed when the Constitution was adopted, only*, and did not prohibit the trial of petty larcenies by the practices, which had theretofore been the practice in New York.

"In Ross *vs.* Irving, 14 Ill. 171, decided in 1852, it was held that the constitutional guaranty that 'the trial by jury shall remain inviolate,' only preserved it *as it existed when the Constitution of the State was adopted*, and did not apply to the case, provided for by statute, of the assessment, in case of recovery of land from a *bona fide* holder, of the value of his improvements, by a proceeding out of court.

"In Tims *vs.* State, 26 Ala. 165, decided in 1855, it was held that the constitutional guaranty of trial by jury *in all prosecutions*, etc., did not apply to *offenses created by statute since the adoption of the Constitution*, but it was within the power of the legislature to make such an offense triable before a justice of the peace, without indictment.

"In People *vs.* Fisher, 20 Barbour, 652, it was held that the clause of the Constitution of New York which secured a trial by jury to an accused person '*refers as well to incidents of the trial as to the number of men necessary to constitute the jury. It means a trial upon presentment or indictment of a grand jury, and in a court of record and common law jurisdiction. A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure. It is not true that making the jury to consist of twelve men constitutes a common law trial.*' It was therefore held that the constitutional provision as to jury trial applied only to capital or infamous offenses which the Constitution required to be tried in the regular common law courts, and not to minor offenses which were left to be provided for by the legislature, and might be made triable in the inferior courts.

"In Koppicus *vs.* State Capital Commissioners, 16 Cal. 248, decided in 1860, it was held that the provision in the constitution of California that 'The right of trial by jury shall be secured to all and remain inviolate forever' applies only to civil and criminal cases *in which an issue of fact is joined*, and that an inquiry of damages with reference to property taken for public use is not an action at law in that sense.

"In Mead *vs.* Walker, 17 Wis. 195, decided in 1862, it was held that the article in the constitution of Wisconsin, which declares that 'The right of trial by jury *shall remain inviolate and extend to all cases at law without* regard to the amount in controversy,' was designed to secure the right to a jury trial only in *those cases where it could be had by law when the constitution was adopted*, and did not prevent compulsory references in actions involving the examination of long accounts, which had been in vogue under territorial laws.

"In Byer *vs.* Davis, 42 Penn. St. 89, decided in 1862, it was held that the constitutional provision that 'the trial by jury *shall be as heretofore* and the right thereof shall remain inviolate' was only intended to preserve the right '*as it existed at the formation of the State government*,' and not to extend it; for which reason the conviction of professional thieves and vagrants by the mayor of a town was not forbidden by it.

"In Trigally *vs.* Mayor of Memphis, 6 Cold. (Tenn.) 382, decided in 1869, the constitutional provision being that 'the right of trial by jury shall remain inviolate,' it was held, as the settled construction, that the right was to remain inviolate *as it existed at the formation of the constitution*, and that cases which before the constitution were not triable by jury need not be made so now; and therefore a conviction of drunkenness before the commissioner of police was sustained.

"In Whitehurst *vs.* Coleen, 53 Ill. 247, decided in 1870, the same rule was applied to enforcing payment against a security for costs, without trial by jury.

"In Knight *vs.* Campbell, 62 Barbour, 16, decided in 1872, it was held that the amendment to the code, extending the jurisdiction of justices of the peace to actions of replevin was not void as against the constitutional provision for jury trial for reason that the justice had a jury of six only, inasmuch as such justice's courts were *in existence when the Constitution was adopted* and the Constitution did not intend to prevent the creation of new inferior tribunals or the enlargement of the jurisdiction of those in existence.

"In Blanchard et al. *vs.* Raines, 20 Fla. 467, decided in 1884, it was held that the constitutional requirement that 'the right of trial by jury shall remain inviolate' does not give such a right where it did not exist before, and is not infringed by a law providing for distress by a landlord for rent and advances, the right of replevying being reserved to the tenant.

"In Rhines *vs.* Clark, 51 Penn. St. 96, decided in 1885, the court said: 'Doubtless the legislature may withhold trial by jury from the new offenses created by statute and unknown to the common law, as in the instance of the Sunday law and numerous enactments in the nature of police regulations for the preservation of the public peace. So may trial by jury be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the *justices hundred dollar law*, and of the authorities that enforce the liability of counties for property destroyed by mobs (5 Barr. 208); and also from proceedings which, though in the common law courts are out of the course of the common law, as in motions for summary relief against judgments. . . . The proceedings in our orphans' courts, and many of those in our quarter sessions, are examples of this nature. In all these instances it is no invasion of the rights of the citizen to withhold trial by jury and provide some other mode for trying contested cases because heretofore, *i. e.*, at the common law, which antedated our Constitution, trial by jury did not exist in such cases.'

"Similar rulings will be found in State *vs.* Glenn. 54 Md. 572; McGear *vs.* Woodruff, 4 Vroom, 213, and State *vs.* Conlin, 27 Vermont, 218.

"It will be observed that these decisions all go in the direction of assigning limits beyond which the right of trial by jury shall not go, instead of expressly indicating the extent to which it *shall* go. But the implication throughout is that the trial by jury as known and practiced when the several constitutions were adopted, which was undoubtedly everywhere the common law jury trial, is the trial guaranteed to the citizen.

"And there is no reason why the same construction should not be given to the Constitution of the United States. The language of the State constitutions generally is, that the right of trial by jury *shall be inviolate*, and sometimes that it shall be *as heretofore*. That of the Federal Constitution is that 'it shall be preserved.' It is substantially the same in both. That only can be *preserved* which is already in existence; so that the existing system of jury trial must have been intended to be perpetuated.

"The question presents itself, To what existing system of jury trial the Constitution refers?

"The United States having had no existence before the Constitution was adopted, there was no common law of the United States and no judiciary history of the United States to which reference could be made for the meaning of the terms 'trial by jury.' But it is well known that the Constitution was framed by men familiar with the common law of England; that its language was borrowed from that source, and in many of its parts can only be interpreted by reference to that system. The Seventh Amendment, in terms, refers to the *common law* incidents of trial by jury; and it is evident that the trial by jury, as known to the common law of England, was the institution intended to be perpetuated. This is especially apparent when we consider that the common law jury trial was in existence in all the States which adopted the Constitution. The judicial power of the Federal Government was to be exercised through the Federal courts of the States, and it was in these courts that citizens of the State were promised the continued employment of that mode of vindicating their rights of person and property to which they

had been accustomed, and which they had inherited from their mother country.

"What the common law jury trial was, can not be a subject of misunderstanding. It was a trial of issues of fact by a jury of twelve men in a court of common law jurisdiction and under the direction of the court, in which the jury were bound to follow the instructions of the court in matters of law, and in which the verdict of the jury might be set aside and a new trial awarded upon various grounds, such as misconduct of the jury, their failure to follow instructions of the court, or newly discovered evidence, etc.

"In all actions at common law, as distinct from suits in equity, this was the form of trial by which the British subject was entitled to have his rights determined. And this right exists throughout the States in this country.

"It is especially to be noted that the State of Maryland, in her Declaration of Rights, adopted in November, 1776, asserted 'that the inhabitants of Maryland are entitled to the common law of England and *the trial by jury according to the course of that law.*' And this is part of the heritage of this people of this District.

"In this connection, the language before cited from 20th Barbour is seen to be especially appropriate. The clause securing the trial by jury, it says, '*refers as well to all other incidents of the trial as to the number of men necessary to constitute the jury. . . . A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure.*'

"A critical examination of the Seventh Amendment will compel us to the conclusion that the common law trial by jury, as I have described it, must be the one intended to be guaranteed.

"There are two clauses in the amendment, so connected by the copulative, 'and,' that they may be read as one sentence. 'The right of trial by jury shall be preserved *and* no fact tried by a jury shall be otherwise re-examined, than according to the rules of the common law.' The jury of the first clause is

evidently the same one to whose finding the conclusive effect is given by the second. The sense is the same as if it read 'The right of trial by *a* jury shall be preserved, and no fact found by *such* jury shall be re-examined, etc.'

"The second clause, in prohibiting a re-examination of a fact found by a jury *otherwise than* according to the rules of the common law, assumes or impliedly concedes the right to have this re-examination according to the rules of the common law.

"But, as we have seen, such a proceeding is unknown to the common law except in the case of a common law jury in a court of common law jurisdiction, where the trial is conducted under direction of the court, and the jury are bound to receive instructions as to the law from the court, and their verdict is liable to be set aside by the same court. It would seem therefore to follow necessarily that such a trial by jury is the kind to which the guaranty of the first clause of the Seventh Amendment is applicable. In other words, the jury guaranteed by the Seventh Amendment is one whose finding of fact can be re-examined according to the rules of the common law.

"It will be observed that several of the decisions before referred to are peculiar.

"Thus in Rhines *vs.* Clark, 51 Penn. St., it was said that trial by jury may be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the justices hundred dollar law; that is to say, apparently, that the constitutional guaranty applied only to the common law courts, and did not prevent the legislature from transferring certain subjects of jurisdiction from the superior courts to inferior courts not having the common law jury.

"And a similiar ruling was had in Knight *vs.* Campbell, *supra.*

"*But our Seventh Amendment would not admit of a similar interpretation, as it describes the class of cases in which a jury trial is guaranteed. They are all suits at common law—as distinct from suits in equity—in which the matter in controversy exceeds $20. It could not be con-*

tended that Congress may withdraw such suits from the common law courts and transfer them to the justices of the peace without a jury. The pecuniary limit of their jurisdiction was enlarged, first, to cases involving $50, then to $100 and finally to $300, and there is nothing to prevent it from being carried up into the thousands.

"And if this can be done without providing for trial by a common law jury, it is evident that the constitutional requirement can be completely evaded and nullified.

"In the Act of March 1, 1823, by which the jurisdiction of the justices was extended to cases involving $50, Congress recognized the constitutional obligation to secure the right of trial by jury.

"But, unfortunately, the jury provided for in said act does not correspond with its common law exemplar. This act and the subsequent legislation still further extending the jurisdiction of the justice have created a very anomalous condition of things. In cases involving any amount between $50, [$100], and $300 a plaintiff has his choice of forums. He may sue in this court, in which case his demands will be passed upon by a common law jury under instructions from the court, and, for good reasons, a verdict may be set aside and a new trial ordered; in addition to which he may except to the rulings of the court and have an appeal to a higher court.

"On the other hand, if he brings suit before a justice and a jury trial is demanded, his case is tried by the jury according to their own notions of the law and the fact. They are not bound to follow any instructions, and their verdict can not be set aside, and according to past rulings there is no appeal.

"It is very evident that this is not the jury trial to which a party is entitled, and one who is subjected to such a proceeding against his will is entitled to relief in some form or other, either by having it arrested entirely or by having the feature of finality taken from it."

What Justice Cox has said is reinforced by the distinction hereinbefore made in this brief as to the great difference in England between the law administered in the king's courts and the law administered outside of them.

But from all this it is evident that a common law jury can not be constituted before a justice of the peace, who can only decide upon matters involving small debts, who is strictly commanded by law to decide according to a mixed standard of law and equity, who can not instruct the jury and who has no power to set aside a verdict and grant a new trial.

E.

There is another constitutional objection to this act which has not yet been adverted to, but which seems to counsel to have great force. It will be recollected from the passage already cited from Blackstone, that the courts of conscience were directed to make such order "*as is consonant to equity and good conscience.*" This power was referred to by Blackstone as a large, discretionary power, "dangerous in that it might create a petty tyranny."

According to this very act under controversy, of March 1, 1823, the justices are empowered to give judgment "according to law and the equity and right of the matter." To this grant, where the amount claimed is above $20, two grave constitutional objections apply.

The first of these is that so much of the act as authorizes the justices to determine the matter otherwise than according to the rules of the common law contravenes the distinction recognized in the Constitution between law and equity. This has been well expressed by Mr. Justice Daniel, delivering the opinion of this court, in the case of Fenn *vs.* Holme, 21 Howard, pp. 484–487:

> "By the Constitution of the United States, and by the acts of Congress organizing the Federal courts, and defining and investing the jurisdiction of these tribunals, the distinction between common law and equity jurisdiction has been explicitly declared and carefully defined and established. Thus, in section 2, Article 3, of the Constitution, it is declared that 'the judicial power of the United States shall extend

to all cases in *law* and *equity* arising under this Constitution, the laws of the United States,' etc.

"In the act of Congress 'to establish the courts of the United States,' this distribution of law and equity powers is frequently referred to; and by the 16th section of that act, as if to place the distinction between those powers beyond misapprehension, it is provided 'that suits in equity shall not be maintained in either of the courts of the United States in any case where plain, adequate and complete remedy may be had at law,' at the same time affirming and separating the two classes or sources of judicial authority. In every instance in which this court has expounded the phrases, proceedings at the common law and proceedings in equity with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to rights and obligations essentially legal; and the latter, as meaning the administration with reference to equitable as contradistinguished from legal rights, of the equity law as defined and enforced by the Court of Chancery in England.

"In the case of Robinson *vs.* Campbell, 3 Wheat., on page 221, this court have said: 'By the laws of the United States, the circuit courts have cognizance of all suits of a civil nature at common law and in equity, in cases which fall within the limits prescribed by those laws. By the 24th section of the judiciary act of 1789 it is provided, that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply. The Act of May, 1792, confirms the modes of proceeding then used at common law in the courts of the United States, and declares that the modes of proceeding in suits in equity shall be according to the principles, rules, and usages, which belong to courts of equity, as contradistinguished from courts of common law, except so far as may have been provided for by the act to establish the judicial courts

of the United States. It is material to consider whether it was the intention of Congress by these provisions to confine the courts of the United States, in their mode of administering relief, to the same remedies, and those only, with all their incidents, which existed in the courts of the respective States; in other words, whether it was their intention to give the party relief *at law*, where the practice of the State courts would give it, and *relief in equity only* when, according to such practice, a plain, adequate, and complete remedy could not be had at law? In some States in the Union no court of chancery exists to administer equitable relief. In some of these States courts of law recognize and enforce in suits at law all equitable rights and claims which a court of equity would recognize and enforce; in others, all relief is denied, and such equitable claims and rights are to be considered as mere nullities at law. A construction, therefore, that would adopt the State practice in all its extent would at once extinguish in such States the exercise of equitable jurisdiction. The acts of Congress have distinguished between remedies at common law and equity, yet this construction would confound them. The court, therefore, think that to effectuate the purposes of the legislature the remedies in the courts of the United States are to be at common law or in equity—not according to the practice in the State courts, but according to the principles of the common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles.'

"In the case of Parsons *vs.* Bedford et al., 3 Peters, on pp. 446, 447, this court, in speaking of the Seventh Amendment of the Constitution, and of the state of public sentiment which demanded and produced that amendment, say:

"'The Constitution had declared, in the Third Article, that the judicial power shall extend to all cases *in law and equity* arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, &c. It is well known that in civil suits, in courts of equity and admiralty, juries do not intervene, and that

courts of equity use the trial by jury only in extraordinary cases. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that the distinction was present in the minds of the framers of the amendment. By *common law*, they meant what the Constitution denominated in the Third Article LAW, not merely *suits* which the common law recognized among its old and settled proceedings, but suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where *equitable rights* alone were recognized and equitable remedies administered.'

"'The same doctrine is recognized in the case of Strother *vs.* Lucas, in 6 Peters, pp. 768, 769 of the volume, and in the case of Parish *vs.* Ellis, 16 Peters, pp. 453, 454. So, too, as late as the year 1850, in the case of Bennett *vs.* Butterworth, reported in the 11th of Howard, 669, the Chief Justice thus states the law as applicable to the question before us:

"'The common law has been adopted in Texas, but the forms and rules of pleading in common-law cases have been abolished, and the parties are at liberty to set out their respective claims and defenses in any form they will bring them before the court; and, as there is no distinction in its courts between cases at law and in equity, it has been insisted in this case, on behalf of the defendant in error, that this court may regard the plaintiff's petition either as a declaration at law or a bill in equity. Whatever may be the laws of Texas in this respect, they do not govern the proceedings in the courts of the United States; and, although the forms of proceedings and practice in the State courts have been adopted in the District Court, yet the adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The Constitution of the United States, in creating and defining the judicial power of the General Government, establishes this distinction between law and equity, and a party who claims a legal title must proceed at law, and may undoubtedly

proceed according to the forms of practice in such cases in the State court. But if the claim be an equitable one, he must proceed according to the rules which this court has prescribed, regulating proceedings in equity in the courts of the United States.'"

See, also, Willard *vs.* Wood, 135 U. S. 309.
R. S. D. C. Section 800.

Another respect in which this provision impugns the Constitutional amendment under consideration is this: If this is a suit at law in which the plaintiff has a complete and adequate remedy, then he is entitled to the benefit of the course of the common law in the trial of the suit. But, if the case is to be tried according to the very right and equity of the matter, he does not obtain his trial according to the course of the common law. In other words, under the Amendment he is absolutely entitled to a common law trial apart from and without any equitable remedy. Upon this point counsel refer for authority, if necessary, to the case of Scott *vs.* Neely, 140 U. S. 106, and cite from the opinion of Mr. Justice Field as follows:

"In the case before us the debt due the complainants was in no respect different from any other debt upon contract; it was the subject of a legal action only, in which the defendants were entitled to a jury trial in the Federal courts. Uniting with a demand for its payment, under the statute of Mississippi, a proceeding to set aside alleged fraudulent conveyances of the defendants, did not take that right from them, or in any respect impair it.

"This conclusion finds support in the prohibition of the law of Congress respecting suits in equity. The 16th section of the Judiciary Act of 1789 enacted that such suits 'shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law;' and this prohibition is carried into the Revised Statutes, (Sec. 723). It is declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England, and always in

this country. And so it has been often adjudged that whenever, respecting any right violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional right to a trial by jury, but because of the prohibition of the act of Congress to pursue his remedy in such cases in a court of equity. Hipp *vs.* Babin, 19 How. 271, 278; Lewis *vs.* Cocks, 23 Wall. 466, 470; Killian *vs.* Ebbinghaus, 110 U. S. 568, 573; Buzard *vs.* Houston, 119 U. S. 347, 351. *All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for a breach of a simple contract, or as damages for injury to person or property are legal actions, and can be brought in the Federal courts only on their law side. Demands of this kind do not lose their character as claims cognizable in the courts of the United States only on their law side, because in some State courts, by virtue of State legislation, equitable relief in aid of the demand at law may be sought in the same action. Such blending of remedies is not permissible in the courts of the United States.*

"In Bennett *vs.* Butterworth, 11 How. 669, 674, in commenting upon the practice prevailing in the courts of Texas, Mr. Chief Justice Taney, after observing that although the common law had been adopted in Texas, the forms and rules of pleading in common law cases had been abolished, and the parties were at liberty to set out their respective claims and defenses in any form that would bring them before the court, said: 'Although the forms of proceedings and practice in the State courts have been adopted in the District Court, yet the adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The Constitution of the United States, in creating and defining the judicial power of the general government, establishes this distinction between law and equity; and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in

such cases in the State court. But if the claim is an equitable one, he must proceed according to rules which this court has prescribed (under the authority of the Act of August 23, 1842), regulating proceedings in equity in the courts of the United States.'

"This decision was followed in Thompson *vs.* Railroad Companies, 6 Wall. 134, 137, the court there observing that 'the remedies in the courts of the United States are, at common law or in equity, not according to the practice of the State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles,' citing also to that effect the case of Robinson *vs.* Campbell, 3 Wheat. 212. In Fenn *vs.* Holme, 21 How. 481, 484, 486, the same doctrine was affirmed.

"'The Code of Mississippi gives to a simple contract creditor a right to seek in equity, in advance of any judgment or legal proceedings upon his contract, the removal of obstacles to the recovery of his claim caused by fraudulent conveyances of property. There the whole suit, involving the determination of the validity of the contract, and the amount due thereon, is treated as one in equity, to be heard and disposed of without a trial by jury. It is not for us to express any opinion of the wisdom of this law, or whether or not in its operation it is more advantageous to the interests of justice than an entire separation of proceedings at law from those for equitable relief. It is sufficient that under the statute of the United States such separation is required in the Federal courts and by the Constitution, in cases at common law, a right to a trial by jury is secured to the defendant."

Therefore, for these additional reasons the act in question is unconstitutional.

F.

A justice of the peace can not unreservedly be called a judicial officer of the United States. As we have seen, his court has never been considered a court of law.

Weikel *vs.* Cate, 58 Md. 105.

As we have also seen, his court administers a mixed system of law and equity, which no United States court can do under the authorities cited.

In this connection it is worthy of note that in Maryland the jurisdiction of the court of chancery was by law limited to matters involving at least five pounds and one penny in money (about $20).

Act of Assembly of 1777, C. XLI. 1 Kilty's Laws.
Hollohan *vs.* Young, 21 D. C. Rep. 183.

In cases involving less, the justice of the peace gave relief upon equitable principles.

His court is not a court of record, and all courts proceeding according to the course of the common law are courts of record.

Ex parte Gladhill, 8 Met. 170.

His qualifications are not those of a judicial officer. By Act of Congress of February 27, 1801 (2 Statutes at Large, 107), it is provided that:

> "There shall be appointed, in and for each of the said counties, such number of *discreet persons* to be justices of the peace as the President of the United shall, from time to time, think expedient," etc.

In Maryland judicial appointees were required by law to be "persons of integrity, and sound legal knowledge."

Act of Assembly of 1804, Ch. LV. 1 Kilty's Laws.

While in the Constitution of the United States no express provision is made that the judges of the Supreme Court and of such inferior courts as that instrument contemplates shall be men learned in the law, yet such qualification has always been assumed as necessary.

The true position of a justice of the peace has been well defined in the dissenting opinion of Alvey, C. J., as follows (R. 27.):

> "A justice of the peace appointed for this District was recognized and defined by the Supreme Court as an officer of the Government of the United States. This was held in the case of Marbury *vs.* Madison, 1 Cr. 137, and in the subsequent case of Wise *vs.* Withers, 3 Cr. 331, where the question was whether a justice of the peace in this District was an officer, judicial or executive, of the Government of the United States, and thus entitled to exemption from military duty. Mr. Chief Justice Marshall, in delivering the opinion of the court, said: 'If a justice of the peace is an officer of the Government of the United States, he must be either a judicial or an executive officer. In fact, his powers, as defined by law, seem partly judicial and partly executive. He is, then, within the letter of the exemption, and, of course, must be considered as comprehended within its proper construction, unless there be something in the act which requires a contrary interpretation.' The justice of the peace was held to be exempt from military duty.
>
> "It is very clear, however, that a justice of the peace in this District is not a judicial officer within the meaning or contemplation of the Constitution of the United States. He is not a judge of a tribunal inferior to the Supreme Court, within the meaning of the Constitution. He is not a judge in any constitutional sense; his proceedings are not according to the course of the common law, and are not matters of record, according to the meaning given by the common law. His jurisdiction in civil matters is purely statutory, and are of a summary

character, intended to bring justice home, in matters of small amount, to every man's door, and to dispense with delays and expensive process of the ordinary courts of record."

G.

What did Congress intend by the provisions in question of this Act of March 3, 1823?

Unfortunately, such annals as were then kept furnish only a very meagre report of their proceedings. While the measure was much debated, yet the details of the debate are not given. At page 267 of the Annals of Congress, Seventeenth Congress, Second Session, we find this entry relating to the bill in question:

> "On this bill a good deal of debate took place, as well on its details, to which amendments were offered, as on its constitutionality and expediency."

At page 270 of the same publication there is this entry:

> "Various other amendments (to the bill in question) were offered, some of which were agreed to and others lost. Amongst those which were unsuccessful was one offered by Mr. Southard, which proposed to strike out all of the bill allowing a jury trial before a justice of the peace, and substituting sections, providing that where the parties to a debt above $20 did not consent to waive a jury trial, then the case should be referred to the court of the county."

Careful search among the files of the Senate and House of Representatives has secured the original papers, which are printed as Appendix II to this brief. Upon reference to pp. 1–8 of this Appendix it will be found that the bill in question was introduced into the House of Representatives as H. R. No. 39. As originally presented it did not provide for a jury trial, but did provide for an appeal to the old circuit court in all cases involving at least five dollars. Section 15 of the amended bill (pp. 6, 7, Appendix II), provided

for a jury trial. That this amendment was introduced to meet the supposed requirements of the Seventh Amendment to the Constitution of the United States appears from the letter of Mr. Deneale (p. 13, Appendix II).

That the constitutional objections to the bill as amended, which have been insisted on in this brief, were then foreseen and urged, is evident from the words of the protests against the passage of the bill printed on pages 17–19 of Appendix II, signed by such eminent members of the old bar as Philip R. Fendall, Thomas Swann and others. At page 32 is printed the protest signed by the late General Walter Jones, perhaps the ablest lawyer whom this District has produced, insisting—

> "that the jury trial, therein provided, has no tendency to subserve the purposes for which it was designed, and may be productive of great inconvenience and abuse."

Especially worthy of consideration are the words of the "petition and remonstrance" contained on pages 34–36 of Appendix II. A keynote is struck when the protestants urge that this act—

> "deprives the party of the right to bring originally his case of fifty dollars value *before a more competent tribunal.*"

Again at page 36 they insist that—

> "the trial by jury as given by this bill (is) the mere shadow of the jury trial, or worse than not having such a trial at all."

But the most impressive of these protests is found in that presented to the Senate and contained at pages 46–48 of Appendix II.; the reasoning of this last is an epitome of the whole argument against the constitutionality of the act in question.

Petitions were also presented in favor of the passage of

the bill. In one of these (Appendix II., p. 24), it is asserted that the constitutionality of the act under discussion has been established by—

> "the decisions of twenty-one, if not twenty-three of the States and Territories, in their legislatures and courts; and by a decision of the Supreme Court in a case which involved the same principle."

Counsel have been unable to verify this assertion.

It is evident from the language of some of these protests (Appendix II., pp. 35, 47), that it was supposed that upon an appeal a second jury would pass again upon the case. The strictures then made upon such a jury trial before a justice of the peace as Cranch, C. J. gave his sanction to and as the practice of so many years confirmed, are not less severe than those of Bradley, J. (Appendix, p. 3), and of the opinion of the majority of the Court of Appeals (R. 17), already quoted (*supra* p. 11).

Upon the foregoing information it would seem that a second jury trial on appeal was intended by the legislation in question.

H.

Would the constitutional objections to this law be removed by allowing this appeal to a second jury?

Alvey, C.J., and Cox, J., think that such would be the case. But it must be remembered that neither of them had argued before him the point concerning the peculiar jurisdiction of a justice of the peace under statutory law. This same jurisdiction is exercised by mandatory and explicit law upon the hearing of the appeal. It was so in Maryland. By the Act of Assembly of 1791, Ch. LXVIII, Sec. IV, it was provided that the justices of the county court should determine such appeal "according to the law of the land and the equity and right of the matter."

1 Kilty's Laws.

By section 7 of the Act of Congress of March 3, 1823, it was provided that upon appeal the judges of the old Circuit Court of the District of Columbia should determine the said appeal "in a summary way . . . according to law, and the equity and right of the matter."

3 Statutes at Large, p. 743.

These very words are incorporated in section 775, R. S. D. C., which is the law now in force. But, as we have seen, this is a jurisdiction not according, but contrary, to the common law, and it is a jurisdiction which a common law court can not exercise under the Constitution and laws of the United States.

In addition, however, to this objection, it is thought that Mr. Justice Bradley has conclusively shown, in his opinion in the case of Kengla *vs.* Booth (Appendix, p. 19), that the right of appeal allowed by law in this District is so hampered by conditions as to destroy the freedom of appeal. The law writers speak of "an unclogged and unfettered right of appeal."

Hare's American Constitutional Law, p. 867.

Again, it is said:

> "A clog on the right of appeal may, agreeably to the same authorities, be equivalent to a denial; and such will be the effect of requiring a kind or amount of security which the appellant can not reasonably be expected to give." *Ibid.*

Jones *vs.* Robbins, 8 Gray, 329, 343.
Saco *vs.* Wentworth, 37 Me. 165, 172.
Plimpton *vs.* Somerset, 33 Vt. 283.
Rednor *vs.* Warner, 22 Ohio St. 275.
Greene *vs.* Briggs, 1 Curtis, 311.
In re Dana, 7 Benedict, 14.

Finally, the authorities cited by Mr. Justice Harlan in delivering the unanimous opinion of this court in the case of

Callan *vs.* Wilson, 127 U. S. 540, and the reasoning of the learned justice, are not confined to criminal cases. While it is true, as Mr. Chief Justice Alvey suggests in his dissenting opinion (R. 29), that the Supreme Court were in that case interpreting the language of the second section of the third Article of, and of the Sixth Amendment to, the Constitution, and we are here dealing with the language of the Seventh Amendment, nevertheless it is difficult to believe that the right to a jury trial was meant by the framers of this language to be absolute as to crimes and only conditional and secondary as to property and reputation. It is submitted that the majority of the Court of Appeals (R., pp. 24, 25), have correctly apprehended and expressed the true meaning of the decision in Callan *vs.* Wilson.

But again, the right of appeal is not an absolute right, nor is it a fixed one. Now the law gives it; tomorrow it may take it away. Now it is fixed at $5; tomorrow it may be fixed at $300. Can the constitutional right to a jury trial depend on legislative favor?

I.

Is any useful purpose to be served by preserving a useless and questionable form?

For the purpose of enforcing this question it is only necessary to refer to the consensus of opinion disclosed in this record, and in the judicial opinions and protests contained in Appendices I and II to this Brief. Attention is especially called to the language of the majority of the Court of Appeals at pages 16, 17 and 24 of the Record.

J.

It may be true that grave inconvenience will result from the judicial determination that justices of the peace in the District of Columbia have not and have never had jurisdiction to try causes involving more than $20.

With respect to the past, it is not thought that the title to any save very inconsiderable real estate will be affected. Sales of lots of ground under executions levied by constables have been of the rarest occurrence. The statute of limitations would prevent litigation here as also in the case of levies upon and transfer of personal property under judgments of these justices involving more than $20. Of this and other inconveniences it must, however, be said that justice is to be done notwithstanding their existence.

As to the failure of remedy in cases involving amounts between $20 and $100, there are several considerations to be taken into account.

1. The Supreme Court of the District of Columbia is the inheritor of the jurisdiction of the Court of King's Bench, and the fact that there is no jurisdiction elsewhere is enough to give it jurisdiction.

Newmeyer *vs.* Cowling, 6 Mackey, 504.

2. From the reasoning of Cox, J., in the case just quoted, it would seem to follow that as the law taking away jurisdiction from the common law court and giving it to the special court was invalid, the prior jurisdiction of the common law court has never been disturbed. If it be said that so much of the law as takes away jurisdiction is valid, even though that part which confers this same jurisdiction on justices of the peace is invalid, it may be answered that the legal consideration for, and motive of, the act failed when the transfer of jurisdiction failed. This court will never sustain a part of an unconstitutional act while invalidating another part which was the legal inducement and purpose for the passing of the whole act.

3. At the worst, only a brief time should be required for the establishing by Congress of a municipal court with judges learned in the law, proceeding according to the

course of the common law, having a seal, and competent under the Constitution to hear such cases with a common law jury.

K.

If Congress could lawfully take away from citizens of this District the right to a common law trial of cases involving less than $50 in 1823, it could lawfully take that same right away in cases involving less than $100 in 1867, and in cases involving less than $300 in 1895. It may lawfully hereafter take away this same right in cases involving $500 or $5,000. When the principle is once admitted, its results are inevitable.

R. ROSS PERRY,
Attorney for Plaintiff in Error.

APPENDIX.

Opinions of Justices Cox and Bradley, of the Supreme Court of the District of Columbia, Concerning Jury Trials before Justices of the Peace in said District.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

UNITED STATES, EX REL. BRIGHTWOOD RAILWAY COMPANY, *vs.* LEWIS I. O'NEIL.	At Law. No. 40,000.

PETITION for writ of *mandamus* to compel respondent, a justice of the peace, to approve an appeal bond. *Denied and petition dismissed.* Decided June 17, 1896.

Mr. Justice BRADLEY delivered the opinion of the Court:

This is a petition for a writ of *mandamus* to compel the respondent, Lewis I. O'Neil, a justice of the peace, to approve an appeal bond tendered for approval and approval declined solely on the ground that the case had been tried by jury. No objection is made to the bond itself. The parties to the record have sought to raise the one question, whether the judgment in the case is appealable.

The question has been several times decided in the negative by the former Circuit Court of the District of Columbia. Davidson *vs.* Burr, 2 Cr. C. C. 515; Maddox *vs.* Stewart, Id. 523; Denny *vs.* Queen, 3 Cr. C. C. 217; Smith *vs.* Chase, Id. 348.

It has also been decided by this court in general term. Fitzgerald *vs.* Leisman, 3 MacA. 6.

These decisions compel me to the same conclusion of the question. If, however, it were an original question, and one of the first impression with me, I can see strong reasons for reaching the opposite conclusion.

The Act of Congress of March 1, 1823 (3 Stat. 743), gave justices of the peace exclusive jurisdiction to the extent of

$50. That act is quite comprehensive. It contains 17 sections regulating the powers and duties of that officer, and the practice before him in the recovery of debts.

Section 15 gives the right to demand a jury trial to either party, where the sum demanded shall exceed $20, and the succeeding section requires the justice to give judgment forthwith upon the verdict when rendered, and authorized him to issue "execution on said judgment in the same manner and under the limitations hereinbefore directed."

Preceding sections authorize *supersedeas* of *all* judgments, the issuance of execution and the levy thereof after the expiration of *supersedeas*.

Section 7 allows an appeal in "*all* cases where the debt or demand both exceed the sum of $5."

The Act of February 22, 1867, regulated the right of appeal, and required an appeal bond as a condition to such appeal. (See Sec. 1028, R. S. D. C.) The condition of the bond to be given was modified by Act of Congress, February 19, 1895. Save in the particular requiring an appeal bond, and in prescribing the character of the condition of the bond, no legislative change has been made in the right of appeal since March 1, 1823. The sections authorizing trial by jury and regulating such trial are unchanged and continue in Secs. 1009–1017, R. S. D. C. There has been no legislative declaration excluding the right of appeal from cases that have been tried by jury. Inasmuch as the Act of 1823 appears to be devised as a complete scheme for regulating the powers, duties and practice of a justice, and it confers the right of jury trial, and the right of appeal without express exclusion, I am of opinion that Congress intended that the right of appeal should exist in "*all cases*" in which judgment for an amount exceeding $5 should be entered up by the justice, including those in which there should be a jury trial and verdict.

In the cases cited, the right has been denied because of the supposed inhibition of Article VII of the Amendments to the Constitution. In Smith *vs.* Chase the court reasons that in cases tried by jury the right is not intended, because it is only given to him who is "aggrieved by the judgment of the justice," "not by the verdict of the jury." That "no man can think himself aggrieved by the judgment of a justice who exercises no judgment at all; no discretion; no choice; no will."

The court attributed to Congress the use of the word judgment in the sense of mental operation rather than judicial sentence. Such an argument is too trivial for serious consideration.

In Denny *vs.* Queen it is held that a justice of the peace is not a court of record, and that a writ of error based upon a bill of exceptions will not lie.

In Smith *vs.* Chase, Cranch, C. J., passing upon the respective powers of the justice and jury, says substantially: Upon demand of trial by jury the cause is taken entirely out of the hands of the justice. He can not instruct them, or set aside their verdict and grant a new trial. He acts ministerially as the clerk of a court acts. The jury are not bound by his opinion upon matters of law. He has no right to say what evidence they shall hear. They are to try the matters in difference between the parties whether matter of law or matter of fact.

In brief it is held that the jury are supreme judges not only of the fact but of the law. They are beyond all regulation or direction in the matter of the receipt and consideration of evidence. Their whims, caprices, passions, and prejudices have unfettered sway in reaching a conclusion upon the evidence, and they are subject to no control except a sort of police supervision which keeps them together until they reach a verdict.

If their verdict is not justified by the evidence, if it is based upon incompetent evidence; if it is palpably the result of passion, or prejudice, or fraud, it is said that the injustice must stand, because the justice of the peace before whom the case is tried has no power to set aside the verdict and grant a new trial, inasmuch as such power is not given him by statute, and the trial is not according to the course of the common law; a writ of error will not lie because the justice is not a court of record; and an appeal although given by statute, is inhibited by the Constitution.

Such a state of affairs was sufficiently mischievous when the extreme possibility in amount was $50. With the increased jurisdiction of the Act of 1895, the mischief is multiplied six times. In view of this circumstance and of the recent decision of the Court of Appeals which has deprived such litigants of the right to have removed to this court, upon a writ of *certiorari*, cases of which it has concurrent jurisdiction of the amount claimed, the reconsideration of

the question of this right of appeal would seem to be imperative.

The case of Parsons *vs.* Bedford, 3 Pet. 433, is the authority for the conclusions reached in Chase *vs.* Smith, and in Fitzgerald *vs.* Leisman. This case originated in the State of Louisiana, and was a proceeding instituted by petition for attachment, under the laws of that State. It was removed to the District Court of the United States, and tried before a jury. By the State law it was provided that in any cause submitted to a jury in which an appeal would lie to the Supreme Court on the demand of either party, the verbal evidence should be written out by the clerk in order to send it to the Supreme Court as a statement of facts. An Act of Congress of 1824 required the practice of the State courts to be followed in United States courts. The defendant demanded that the evidence should be reduced to writing by the clerk, but this was refused by the court. This was assigned as error. Story, J., in delivering the opinion of the court, held that it was not the intention of Congress to give absolute force to State methods of procedure, that the facts could not be certified to the Supreme Court for review, and thus creating a different practice in cases from Louisiana from that obtaining in cases coming from other States.

He adverted to the fact that there was a motion for new trial which was overruled by the court below, that the bills of exceptions show that no exception was taken to the admission or rejection of evidence, that no charge to the jury was asked, and that the only error alleged was that mentioned above. This he holds to have been no error.

He divides the 7th Amendment of the Constitution into two distinct provisions. One preserving the right of trial by jury, the other prohibiting the re-examination of a fact once tried by a jury otherwise than according to the course of the common law—a distinct provision. The latter he interprets as prohibiting the re-examination of any facts tried by a jury. The language of the court is broad enough to cover facts determined by the verdict of an undirected, unguided, uncontrollable jury of a justice of the peace of this District, but the court was dealing with the case of a jury trial under the direction and control of a court of record, that court having power to grant a new trial; and the case was there upon a writ of error and a bill of excep-

tions. Its language should be limited by the situation. Although the case below did not originate as a common law action, the trial was according to the course of the common law in all essential matters. McLean, J., dissenting, says, the 2d clause of the 7th Article refers to the 1st clause of the sentence which limits the trial to suits at common law, and he adds "if this were not the true construction of the sentence facts found by a jury in an issue directed by a court of chancery would be conclusive on the chancellor."

In their brief in that case Messrs. Webster & Livingston say: "The amendment was adopted when all the proceedings in the courts of the United States and in the courts of the different States were under the common law." "It was intended to guard the rights of citizens *proceeding according to the common law.*"

The language of Justice Story is broad enough to apply to the verdict of a jury under an inquisition *de lunatico* in this District, and to the power of the chancellor upon the return of the inquisition to set aside the verdict upon re-examination of the facts (Alex. Ch. Pr. 222–227). A power never questioned to my knowledge.

Another instance in which the Supreme Court of the United States has had occasion to consider this question is the case of The Justices *vs.* Murray, 9 Wall. 274; and the court cites with approval the case of Parsons *vs.* Bedford. The facts of this case indicate that the defendant in error was sued in the State court of New York for assault and battery and false imprisonment. The case was tried before a jury and a verdict was recovered against him. A writ of error was then issued from the Circuit Court of the United States for the Southern District of New York to the trial court, under the provisions of the Act of Congress of March 3, 1863, authorizing such writ within six months after judgment, and a trial *de novo* in any case against an officer, civil or military, for any arrest or imprisonment during the rebellion by virtue or under color of any authority by or under the President of the United States. So much of such act as provides for removal and retrial of a cause that had been tried by a jury was declared to be unconstitutional.

In this case there had been a trial according to the course of the common law, and it was a suit at common law.

Justice Nelson remarks: "The terms of the Amendment

are general, and contain no qualifications in respect to the restriction upon the appellate jurisdiction of the courts, except as to the class of cases, namely, *suits at common law where there has been a trial by jury.* The natural inference is that no other was intended."

As supporting the claim that the prohibited re-examination of a fact tried by a jury relates to a case tried according to the course of the common law, see Warring et al. *vs.* Clarke, 5 How. 460; In re Martin, 2 Paine, 348.

The occasion of Article 7 of the Amendments is suggested in the opinion of the court in The Justices *vs.* Murray, and in Sec. 1763 of Story's Commentaries on the Constitution. In the opinion and in the succeeding sections of Story, the 81st number of the Federalist by Alexander Hamilton is referred to, the latter work quoting from it *in extenso.* Justice Nelson remarks "that the Amendment (to the Constitution) submitted in the 1st session of Congress, by Mr. Madison, adopts the restriction suggested by Mr. Hamilton, "and almost in the same words." Mr. Hamilton's remarks in this connection, therefore, are suggestive in the effort to correctly interpret the article of the Amendments in question. After stating that in New England it was not uncommon to appeal from one jury to another, and that such an appeal is familiar both in language and practice, and even a matter of course until there have been two verdicts on a side, he says, with reference to possible Congressional limitations, "it will not answer to make an express exception of cases which shall have been originally tried by jury, because in the courts of some States all causes are tried in this mode, and such an exception would preclude the revision of matters of fact as well where it might be proper as where it might be improper." . . . "The legislature of the United States would certainly have full power to provide that in appeals to the Supreme Court there should be no re-examination of facts where they had been tried in the original causes by juries. This would certainly be an authorized exception; but if, for the reason already intimated, it should be thought too extensive, it might be qualified with a limitation to *such causes only* as are determinable at common law in that mode of trial."

It is quite plain that Mr. Hamilton was of the opinion that review or re-examination of matters of fact tried by jury, should be prohibited only in cases where there had

been a trial according to the course of the common law. It appears to be equally plain that the restriction suggested by him, embodied in the Amendment, is reasonably susceptible of but that interpretation.

It could not be claimed that a trial by a justice of the peace without a jury, under the statute, which requires him "to give judgment according to law, and the equity and right of the matter," is according to the course of the common law. Still less reason is there to claim that a jury trial before such justice, in which the justice exercises no direct or controlling function, and the jury are "a law unto themselves," reaching a verdict by their own methods and processes, which is beyond the review or re-examination of any person or court, is according to the course of the common law.

I suggest that such a trial, such a verdict, or such a situation was never contemplated by the framers of the Amendment, and that a reconsideration of this question ought to result in the overruling of the old cases.

THE CAPITAL TRACTION COMPANY
vs.
CHARLES HOF.

At Law.
No. 40,239.

PETITION for writ of *certiorari* to remove a case from a justice of the peace to this court for trial according to the course of the common law. Hearing on motion to quash the writ of *certiorari*. Decided October 6, 1896.

Mr. Justice COX delivered the opinion of the Court:

The petition, which was filed on the 8th of September, shows, in substance, that Charles Hof, on the 20th of August, last, brought suit before Lewis I. O'Neal, Esq., a justice of the peace, to recover damages to the amount of three hundred dollars; that on the 8th of September, after the petitioner had filed its plea and issue had been joined, the said Hof demanded a trial by jury of the said issue, and thereupon the said justice issued a venire to a constable to summon a jury for the trial of said suit on the 10th of September.

The petitioner further sets forth the inconveniences and and disadvantages under which it will labor in such a trial,

and claims that such a proceeding would not be the form of trial by jury to which it is entitled under the Seventh Amendment to the Constitution of the United States.

It therefore prays a writ of *certiorari* to remove the claim of Hof into this court for trial according to the course of the common law.

The *certiorari* was issued and the justice returned the record of his proceedings into this court.

A motion was then made to quash the *certiorari*, and upon this argument was heard on both sides.

In the case of Smith *vs.* Chase, 3 Cr. C. C. 348, which was the latest case in the old Circuit Court of this District, on this subject, and which was decided in 1828, that court held that a writ of error would not lie to the judgment of a justice of the peace on the verdict of a jury, and that he was not bound to sign a bill of exceptions, and they overruled a motion made in that case to compel the justice from whom an appeal had been taken to sign one.

No opinion was pronounced as that of the court, but Ch. J. Cranch delivered an opinion containing his own views and his reasons for concurring in the judgment, which, he said, were exclusively his own, and for which the court was not responsible.

This conclusion of that court has been silently acquiesced in by the profession for over sixty years. It was announced at a time when the jurisdiction of a justice of the peace extended only to cases involving not more than fifty dollars. But since the great enlargement of the jurisdiction of justices by modern legislation, in consequence of which controversies involving as much as $300 have to be submitted to the uncontrolled arbitrament of justices' juries, the profession has become impressed with the importance of re-examining questions which arose under a different condition of affairs, and which were then hardly of sufficient importance to attract the attention and consideration which they are now seen to deserve.

By the Act of February 27, 1801, by which Congress assumed jurisdiction over this District, justices of the peace were given cognizance of personal demands to the value of twenty dollars.

By the Act of March 1, 1823, their jurisdiction was extended to cases involving fifty dollars. And here Congress was confronted with the Seventh Amendment to the Con-

stitution guaranteeing the right to trial by jury in controversies involving more than twenty dollars. Accordingly, the 15th and 16th sections of the act are an attempt to reconcile the summary jurisdiction of the justice with the constitutional requirement. Whether it was a success is a question of no little gravity and importance.

The Seventh Amendment to the Constitution reads as follows:

"In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

I am not aware of any decisions in the Federal courts that throw any light on the questions presented in the present proceeding. But the State constitutions contain provisions similar to, and almost identical with, the Seventh Amendment, which have been the subject of discussion and construction in the State courts.

Thus, in Murphy *vs.* People, 2 Cow. 815, decided in 1824, it was held that a constitutional provision that "the trial by jury *in all cases in which it has been heretofore used*, shall remain inviolate *forever*," secured the right *as it existed when the constitution was adopted, only*, and did not prohibit the trial of petty larcenies by the practices, which had theretofore been the practice in New York.

In Ross *vs.* Irving, 14 Ill. 171, decided in 1852, it was held that the constitutional guaranty that "the trial by jury shall remain inviolate," only preserved it *as it existed when the constitution of the State was adopted*, and did not apply to the case, provided for by statute, of the assessment, in case of recovery of land from a *bona fide* holder, of the value of his improvements, by a proceeding out of court.

In Tims *vs.* State, 26 Ala. 165, decided in 1855, it was held that the constitutional guaranty of trial by jury *in all prosecutions*, etc., did not apply to *offenses created by statute since the adoption of the Constitution*, but it was within the power of the legislature to make such an offense triable before a justice of the peace, without indictment.

In People *vs.* Fisher, 20 Barbour, 652, it was held that the clause of the constitution of New York which secured a trial by jury to an accused person "*refers as well to incidents of the trial as to the number of men necessary to constitute the jury.*

It means a trial upon presentment or indictment of a grand jury, and in a court of record and common law jurisdiction. A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure. It is not true that making the jury to consist of twelve men constitutes a common law trial." It was therefore held that the constitutional provision as to jury trial applied only to capital or infamous offenses which the constitution required to be tried in the regular common law courts, and not to minor offenses which were left to be provided for by the legislature, and might be made triable in the inferior courts.

In Koppicus *vs.* State Capital Commissioners, 16 Cal. 248, decided in 1860, it was held that the provision in the constitution of California that "The right of trial by jury shall be secured to all and remain inviolate forever" applies only to civil and criminal cases *in which an issue of fact is joined*, and that an inquiry of damages with reference to property taken for public use is not an action at law in that sense.

In Mead *vs.* Walker, 17 Wis. 195, decided in 1862, it was held that the article in the constitution of Wisconsin, which declares that "The right of trial by jury *shall remain inviolate and extend to all cases at law without* regard to the amount in controversy," was designed to secure the right to a jury trial only in *those cases where it could be had by law when the constitution was adopted*, and did not prevent compulsory references in actions involving the examination of long accounts, which had been in vogue under territorial laws.

In Byer *vs.* Davis, 42 Penn. St. 89, decided in 1862, it was held that the constitutional provision that "the trial by jury *shall be as heretofore* and the right thereof shall remain inviolate" was only intended to preserve the right "*as it existed at the formation of the State government*," and not to extend it; for which reason the conviction of professional thieves and vagrants by the mayor of a town was not forbidden by it.

In Trigally *vs.* Mayor of Memphis, 6 Cold. (Tenn.) 382, decided in 1869, the constitutional provision being that "the right of trial by jury shall remain inviolate," it was held, as the settled construction, that the right was to remain inviolate *as it existed at the formation of the constitution*, and

that cases which before the constitution were not triable by jury need not be made so now; and therefore a conviction of drunkenness before the commissioner of police was sustained.

In Whitehurst *vs.* Coleen, 53 Ill. 247, decided in 1870, the same rule was applied to enforcing payment against a security for costs, without trial by jury.

In Knight *vs.* Campbell, 62 Barbour, 16, decided in 1872, it was held that the amendment to the code, extending the jurisdiction of justices of the peace to actions of replevin was not void as against the constitutional provision for jury trial for reason that the justice had a jury of six only, inasmuch as such justice's courts were *in existence when the Constitution was adopted* and the Constitution did not intend to prevent the creation of new inferior tribunals or the enlargement of the jurisdiction of those in existence.

In Blanchard et al. *vs.* Raines, 20 Fla. 467, decided in 1884, it was held that the constitutional requirement that "the right of trial by jury shall remain inviolate" does not give such a right where it did not exist before, and is not infringed by a law providing for distress by a landlord for rent and advances, the right of replevying being reserved to the tenant.

In Rhines *vs.* Clark, 51 Penn. St. 96, decided in 1885, the court said: "Doubtless the legislature may withhold trial by jury from the new offenses created by statute and unknown to the common law, as in the instance of the Sunday law and numerous enactments in the nature of police regulations for the preservation of the public peace. So may trial by jury be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the *justices hundred dollar law*, and of the authorities that enforce the liability of counties for property destroyed by mobs (5 Barr. 208); and also from proceedings which, though in the common law courts are out of the course of the common law, as in motions for summary relief against judgments. . . . The proceedings in our orphans' courts, and many of those in our quarter sessions, are examples of this nature. In all these instances it is no invasion of the rights of the citizen to withhold trial by jury and provide some other mode for trying contested cases because heretofore, *i. e.*, at the common law, which antedated our Constitution, trial by jury did not exist in such cases."

Similar rulings will be found in State *vs.* Glenn. 54 Md. 572; McGear *vs.* Woodruff, 4 Vroom, 213, and State *vs.* Conlin, 27 Vermont, 218.

It will be observed that these decisions all go in the direction of assigning limits beyond which the right of trial by jury shall not go, instead of expressly indicating the extent to which it *shall* go. But the implication throughout is that the trial by jury as known and practiced when the several constitutions were adopted, which was undoubtedly everywhere the common law jury trial, is the trial guaranteed to the citizen.

And there is no reason why the same construction should not be given to the Constitution of the United States. The language of the State constitutions generally is, that the right of trial by jury *shall be inviolate*, and sometimes that it shall be *as heretofore*. That of the Federal Constitution is that "it shall be preserved." It is substantially the same in both. That only can be *preserved* which is already in existence; so that the existing system of jury trial must have been intended to be perpetuated.

The question presents itself, To what existing system of jury trial the Constitution refers?

The United States having had no existence before the Constitution was adopted, there was no common law of the United States and no judiciary history of the United States to which reference could be made for the meaning of the terms "trial by jury." But it is well known that the Constitution was framed by men familiar with the common law of England; that its language was borrowed from that source, and in many of its parts it can only be interpreted by reference to that system. The Seventh Amendment, in terms, refers to the *common law* incidents of trial by jury; and it is evident that the trial by jury, as known to the common law of England, was the institution intended to be perpetuated. This is especially apparent when we consider that the common law jury trial was in existence in all the States which adopted the Constitution. The judicial power of the Federal Government was to be exercised through the Federal courts in the States, and it was in these courts that citizens of the State were promised the continued employment of that mode of vindicating their rights of person and property to which they had been accustomed, and which they had inherited from their mother country.

What the common law jury trial was, can not be a subject of misunderstanding. It was a trial of issues of fact by a jury of twelve men in a court of common law jurisdiction and under the direction of the court, in which the jury were bound to follow the instructions of the court in matters of law, and in which the verdict of the jury might be set aside and a new trial awarded upon various grounds, such as misconduct of the jury, their failure to follow instructions of the court, or newly discovered evidence, etc.

In all actions at common law, as distinct from suits in equity, this was the form of trial by which the British subject was entitled to have his rights determined. And this right exists throughout the States in this country.

It is especially to be noted that the State of Maryland, in her Declaration of Rights, adopted in November, 1776, asserted "that the inhabitants of Maryland are entitled to the common law of England and *the trial by jury according to the course of that law.*" And this is part of the heritage of this people of this District.

In this connection, the language before cited from 20th Barbour is seen to be especially appropriate. The clause securing the trial by jury, it says, "*refers as well to all other incidents of the trial as to the number of men necessary to constitute the jury. . . . A common law jury trial can only be had in a court of common law jurisdiction, both as regards the character of the court and its mode of procedure.*"

A critical examination of the Seventh Amendment will compel us to the conclusion that the common law trial by jury, as I have described it, must be the one intended to be guaranteed.

There are two clauses in the amendment, so connected by the copulative, "and," that they may be read as one sentence. "The right of trial by jury shall be preserved *and* no fact tried by a jury shall be otherwise re-examined, than according to the rules of the common law." The jury of the first clause is evidently the same one to whose finding the conclusive effect is given by the second. The sense is the same as if it read "The right of trial by a jury shall be preserved, and no fact found by *such* jury shall be re-examined, etc."

The second clause, in prohibiting a re-examination of a fact found by a jury *otherwise than* according to the rules of the common law, assumes or impliedly concedes the right to

have this re-examination according to the rules of the common law.

But, as we have seen, such a proceeding is unknown to the common law except in the case of a common law jury in a court of common law jurisdiction, where the trial is conducted under direction of the court, and the jury are bound to receive instructions as to the law from the court, and their verdict is liable to be set aside by the same court. It would seem therefore to follow necessarily that such a trial by jury is the kind to which the guaranty of the first clause of the Seventh Amendment is applicable. In other words, the jury guaranteed by the Seventh Amendment is one whose finding of fact can be re-examined according to the rules of the common law.

It will be observed that several of the decisions before referred to are peculiar.

Thus in Rhines *vs.* Clark, 51 Penn. St., it was said that trial by jury may be withheld from new jurisdictions created by statute and clothed with no common law powers, as in the instance of the justices hundred dollar law; that is to say, apparently, that the constitutional guaranty applied only to the common law courts, and did not prevent the legislature from transferring certain subjects of jurisdiction from the superior courts to inferior courts not having the common law jury.

And a similar ruling was had in Knight *vs.* Campbell, *supra.*

But our Seventh Amendment would not admit of a similar interpretation, as it describes the class of cases in which a jury trial is guaranteed. They are all suits at common law—as distinct from suits in equity—in which the matter in controversy exceeds $20. It could not be contended that Congress may withdraw such suits from the common law courts and transfer them to the justices of the peace without a jury. The pecuniary limit of their jurisdiction was enlarged, first, to cases involving $50, then to $100 and finally to $300, and there is nothing to prevent it from being carried up into the thousands.

And if this can be done without providing for trial by a common law jury, it is evident that the constitutional requirement can be completely evaded and nullified.

In the Act of March 1, 1823, by which the jurisdiction of the justices was extended to cases involving $50, Congress

recognized the constitutional obligation to secure the right of trial by jury.

But, unfortunately, the jury provided for in said act does not correspond with its common law exemplar. This act and the subsequent legislation still further extending the jurisdiction of the justice have created a very anomalous condition of things. In cases involving any amount between $50 and $300 a plaintiff has his choice of forums. He may sue in this court, in which case his demands will be passed upon by a common law jury under instructions from the court, and, for good reasons, a verdict may be set aside and a new trial ordered; in addition to which he may except to the rulings of the court and have an appeal to a higher court.

On the other hand, if he brings suit before a justice and a jury trial is demanded, his case is tried by the jury according to their own notions of the law and the fact. They are not bound to follow any instructions, and their verdict can not be set aside, and according to past rulings there is no appeal.

It is very evident that this is not the jury trial to which a party is entitled, and one who is subjected to such a proceeding against his will is entitled to relief in some form or other, either by having it arrested entirely or by having the feature of finality taken from it.

If the remedy be sought by *certiorari* the effect is to bring the proceedings before this court; but all that our court could do would be to quash the proceedings. We could not try the case here upon the merits, and, on the other hand, we could not send the case back to the justice to be tried without a jury; for that would be denying to the parties their constitutional rights. The case could not be brought here by *certiorari* on the ground of concurrent jurisdiction, as the Court of Appeals has decided. Under the acts of Congress, it was properly brought before the justice and was within his jurisdiction, and the issuing of the venire for a jury was the only excess of authority. Or, if it be held that it could not, according to the Constitution, be brought before a justice, still this court could not transfer it into this court, but could only arrest the proceedings before the justice. The effect would be to suspend the whole proceeding before the justice and compel the plaintiff to dismiss his suit there and bring his action anew in this court.

Another mode of treating the matter would be to regard the verdict of the jury as having no more effect than the finding of the justice without a jury.

This not being a verdict by a common law jury, the constitutional prohibition of a re-examination of facts found by them does not apply. They are nothing more than compulsory referees. On the demand of either party, they are to hear the case and make an award. But whether the case is heard by them or by the justice alone, the judgment is to be given by him.

Under the Act of March 1, 1823, where the debt or demand exceeds $5, and either party shall think himself aggrieved *by the judgment of the justice*, he shall be at liberty to appeal. It is not the verdict of the jury that constitutes a grievance, because this would be harmless without the judgment entered upon it. With or without a jury, it is the judgment given by the justice by which the unsuccessful litigant is aggrieved.

So that in either case, the right of appeal would seem, by the letter of the law, to be given, and it is only what seems to me to be the mistaken idea that has heretofore prevailed in regard to the character of the justice's jury and the conclusiveness of their findings which has prevented the right of appeal from being recognized.

In the first case in the old Circuit Court, in which the question of appeal from a justice, after a verdict of a jury arose in 1824, viz., Sherburne *vs.* Semmes and wife (2 Cr. C. C. 446), the court simply doubted.

In the second case, Davidson *vs.* Burr, Id. 515, decided in 1824, the court denied the appeal, on the ground that the facts tried by a jury could not be re-examined, under the second clause of the Seventh Amendment. Mr. Morsell, Justice, dissented.

In the third case, Maddox *vs.* Stewart, Id. 523, also decided in 1824, the appeal was dismissed on the same ground, Morsell, J., again dissenting.

In the fourth case, Denny *vs.* Queen, decided in 1827, 3 Cr. C. C. 217, the appeal was dismissed on the same ground.

In the fifth case, Smith *vs.* Chase, the decision overruled a motion to require the justice to sign a bill of exceptions. No reasons were given by the whole court, but Judge Cranch took the same ground as in the other cases.

In the second and third cases Judge Morsell dissented, so that the court were not unanimous.

It will be seen that the Circuit Court were dominated by the idea that the justice's jury was the jury guaranteed by the Constitution. It was simply assumed, no question having been made as to it, either by counsel or the court. If this be an error, as we think is shown by the foregoing considerations, the whole foundation of the objection to an appeal from the justice's judgment on the verdict of a jury is taken away.

In my opinion, the Act of 1823 may fairly be construed to give an appeal in all cases, whether the issue be tried by the justice or a jury. And in this view Justice Bradley concurs in a recent opinion—U. S. *ex rel.* Brightwood Rwy. Co. *vs.* O'Neal, 24 Wash. Law Rep. 406.

It seems to me, on the whole, that the preferable form of relief in these cases, as a general rule, is to recognize the right of appeal, and, if the justice should refuse to allow an appeal after verdict, to issue a *mandamus* requiring him to do so.

When it is once understood that the verdict of a justice's jury is not conclusive, the motive for demanding a jury trial will be wanting, but whether it be had or not, the party aggrieved can have his jury trial in this court, on appeal, and the inconvenience resulting from the views formerly held on this subject will be avoided.

In this particular case, however, if I should quash the writ of *certiorari*, leaving the case to be proceeded with by the justice, and leaving to the defendant the remedy of appeal, in case of adverse verdict and judgment, nothing would be settled except the abstract question of the right of appeal, and that only as far as my individual opinion can settle it; whereas, if the jury process of the justice be quashed, a judgment will be rendered which can be immediately taken to the Court of Appeals, and it is of the highest importance that the question involved in this case be decided there as speedily as possible.

If it is desired to take the case at once to the Court of Appeals, therefore, I will pass an order quashing all the proceedings before the justice subsequent to the joining of issue.

JACOB H. KENGLA
vs.
ROLAND C. BOOTH. } At Law. No. 40,356.

HEARING on motion to quash writ of *certiorari*, to remove proceedings from before a justice of the peace into this court. *Motion overruled, and proceedings before justice quashed.* Decided November 3, 1896.

Mr. Justice BRADLEY delivered the opinion of the Court:

The petitioner was defendant in an action brought against him before Lewis I. O'Neal, one of the justices of the peace for the District of Columbia, by Roland C. Booth, in which the plaintiff recovered judgment for one hundred dollars on the 20th day of August, 1896. The defendant did not appeal, but filed his petition on the 6th day of October, 1896, and obtained a writ of *certiorari*, directed to said justice of the peace, who has made due return thereto.

The ground of the application for the writ is that the justice was without jurisdiction to try the action because the petitioner, under the laws in force in the District of Columbia, was unable to obtain a trial by jury according to the course of the common law, a right which he claims was guaranteed by the Constitution of the United States, the amount in controversy exceeding the sum of twenty dollars.

The plaintiff has moved to quash the writ, and to remand the case to the justice of the peace.

At the hearing, several grounds were presented in support of the motion, one of which only will be considered, that being the principal question, and decisive of the controversy. It is the constitutional question raised by the petition.

Article 7 of the Amendments to the Constitution reads, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

In U. S. *ex rel.* Brightwood Railway Co. *vs.* O'Neal, 24 Wash. Law Rep. 406, the opinion was expressed by this court that the re-examination of a fact tried by a jury, otherwise than according to the rules of the common law, is prohibited by this amendment only in cases where the trial of the fact

by jury had been according to the course of the common law; such trial by jury as is afforded by law in the court of a that justice of the peace is not according to the course of the common law; and that the right of appeal given by Act of Congress of March 1, 1823, in all cases where the debt or demand exceeded the sum of five dollars existed in case of a judgment entered up by the justice upon the verdict of a jury. In that proceeding the right of appeal under the statute was the only question.

In the case at bar the broad proposition is made that, under the statutes regulating the jurisdiction and proceedings of justices of the peace, a trial by jury according to the course of the common law can not be had, and, therefore, the legislature conferring jurisdiction upon such officers to try "suits at common law" which involve rights exceeding twenty dollars in value is unconstitutional.

If this conclusion is reached, it necessarily follows that the motion to quash this writ of *certiorari* should be overruled, and that the entire proceedings before the justice in the case certified into this court should be quashed.

The question presented is a serious one, inasmuch as, if the contention of the defendant is sustained ultimately, these officers will be deprived of jurisdiction in suits "where the value in controversy exceeds twenty dollars." In view of such possible consequences, I have given the subject the most careful consideration.

My opinion that the trial by jury to be had before a justice of the peace of this District is not according to the course of the common law having been announced in U. S. *ex rel.* Brightwood R. Co. *vs.* O'Neal, the inquiry now is, whether by the words "trial by jury" used in this Seventh Amendment, trial by jury *according to the course of the common law* was intended, and, if so, whether the right of appeal to this court conferred conditionally by the statute, and the incidental right of common law jury trial here upon such appeal preserves such constitutional right.

I will first consider the latter question. The Act of 1823 provides that, upon such appeal, either of the parties may demand a trial by jury. The right is "preserved" to the appellant, who takes and perfects his appeal. But what are the essentials to the exercise of the right of appeal, and of what avail is the right of appeal to one who is unable to comply with its statutory requirements?

The right of appeal is given in all cases when the demand exceeds $5. By the Act of 1823 either party aggrieved might appeal to the next circuit court, and, upon petition of the appellant that court was empowered and directed to hear and determine the matter in a summary way. No appeal bond or undertaking was required; the right was unconditioned. The Act of February 22, 1867, regulated appeals by providing that *no appeal should be allowed* unless the appellant, with sufficient surety approved by the justice, entered into an undertaking to satisfy and pay all intervening damages and costs arising on the appeal. It also required the appellant to make the deposit for costs with the clerk of this court, exacted at the commencement of every suit in this court by the Act of June 27, 1864, *or* to obtain leave to prosecute his appeal *in forma pauperis*. The Act of February 19, 1895, largely increased the jurisdiction of the justices of the peace, and at the same time added to the burdens of the appellant by requiring of him an undertaking with sufficient surety approved by the justice, conditioned to satisfy and pay whatever final judgment might be recovered in the appellate court.

If the unrestricted right of appeal conferred by the Act of 1823 could be reasonably construed to *preserve* the right of trial by jury, it would seem that the burdens imposed upon the appellant by the Act of 1867, and more emphatically those imposed by the Act of 1895, so hamper the right as to deprive it of its constitutional prerogative of free existence. The party injuriously affected by the judgment may be so situated as to property, money, credit, or friends, as to be incapable of compliance with the statutory requirements abridging his right of appeal, and his appeal being denied, so far as a trial in this court might give it, he is deprived of a common law jury trial.

It might be well claimed that if the right of appeal were unrestricted, free to persons aggrieved, without any requirement of appeal bond or deposit of costs; that inasmuch as the appellant must move at some personal inconvenience or expense to obtain a common law jury trial, of which he was deprived in the first instance, his constitutional right has been impaired. With the existing statutory exactions of undertaking on appeal to satisfy and pay the judgment of the appellate court, the deposit of costs with the clerk, or the prosecution of the appeal by leave of court *in forma*

pauperis, it is my opinion that the privilege of jury trial in this court does not preserve the right. Greene *vs.* Briggs, 1 Curtis, 311; *In re* Dana, 7 Benedict, 14; Callan *vs.* Wilson, 127 U. S. 540.

Do the words in the Amendment "*trial* by jury" mean trial by jury according to the course of the common law?

In The Capital Traction Co. *vs.* Hof, 24 Wash. Law Rep. 646, this question was considered by Justice Cox and by him answered in the affirmative. My examination of it has been greatly assisted by his able opinion, and I am compelled to the same conclusion.

At the time of the adoption of this amendment the expression "trial by jury" "in suits at common law" had a well settled meaning in the States. It was understood as a judicial proceeding in which issues of facts are determined by a jury under the guidance of a court that regulates the procedure and determines questions of law. The opposers of the Constitution had based their opposition in part upon the absence of a provision guarantying a jury trial in civil cases. Such guaranty had been given in the "trial of all crimes," but its absence was insisted as in effect a denial of the right in civil cases.

The Judiciary Act, September 24, 1789, protected this right in the courts of the United States by providing that "the trial of issues in fact in the District courts in all causes except civil causes of admiralty and maritime jurisdiction shall be by jury;" also, "the trial of issues in fact in the circuit courts shall in all suits, except those of equity and admiralty jurisdiction, be by jury." This amendment to the Constitution was proposed to the legislatures of the several States by the First Congress on the 25th day of September, 1789. It fixed the right, then protected only by legislation, by the more permanent guaranty of the Constitution.

The amendment had no relation to suits or actions in State courts, the citizens of the States being protected in their rights by State legislation, State constitutions, and bills or declarations of rights. It affected only proceedings in United States courts. It however applied to the Territories (Webster *vs.* Reid, 11 How. 437); and it applies to the District of Columbia. Callon *vs.* Wilson, *supra*.

In the State of Maryland an Act of Assembly was passed December 29, 1791, which conferred jurisdiction upon jus-

tices of the peace in cases where the amount claimed did not exceed ten pounds current money or 1,000 pounds of tobacco. This act remained in force in the present District of Columbia until the Act of Congress of February 27, 1801, which continued in force the laws of the State of Maryland as they then existed. It provided for a circuit court and its jurisdiction, and with respect all cases where the personal demand, exclusive of costs, did not exceed the value of twenty dollars, gave cognizance to justices of the peace, which sum they should not exceed, any law to the contrary notwithstanding.

The Act of Congress of March 1, 1823, increased their jurisdiction to fifty dollars, and in every action where the sum demanded exceeded twenty dollars, authorized either party to demand "that such action be tried by a jury," and upon such demand required the justice to issue a *venire*, causing twelve jurors to be summoned, who should sit together, hear the proofs and allegations of the parties, and when their verdict should be returned to the justice he was "required to give judgment forthwith thereon." However ineffectual this legislation may have been to secure a trial by jury according to the course of common law in the cases intended to be affected, it clearly indicates that Congress had in view this Seventh Amendment. That such a jury trial was not regarded by the legislators as according to the course of the common law, would seem to be indicated by the provision in the Act of 1823, that, upon an appeal, which is expressly given in all cases when the debt or demand exceeds five dollars, either party might demand a trial by jury. What was intended to be guaranteed by this amendment must have been as full and as large in the matter of jury trial as the right conferred upon the Northwest Territory by the ordinance of 1787. The second article of that ordinance reads: "The inhabitants of that Territory shall always be entitled to the benefits of the writs of *habeas corpus*, and of the trial by jury . . . and of judicial proceedings according to the course of the common law."

In Green *vs.* Briggs, *supra*, Curtis, J., commenting upon the constitution of Rhode Island, and the provision that "the right of trial by jury shall remain inviolate" says, "in civil causes a trial by jury is to be had in those classes of cases in which it had been practiced down to the time when the constitution was formed; and such trial is to be sub-

stantially in accordance with such modes of proceeding as had then existed."

He was dealing with a criminal case, and further remarked, "The accused has an absolute right to a trial by jury. He has also a right to be so charged that when that *trial* takes place, the jury shall pass upon the whole charge so far as it involves matter of fact, and *under the direction of the court* shall apply the law to all mixed questions of law and fact."

In Mitchell *vs.* Harmony, 13 How. 115, at p. 143, Chief Justice Taney says: "With regard to the legitimate and proper mode of operation and effect of the trial by jury, the language of Lord Coke should ever be kept in mind, as furnishing the true and only true standard by which to measure this valuable institution. After giving his derivation of the terms verdict and judgment, this great common lawyer proceeds, '*et sicut ad quæstionem juris non respondent sed judices; sic ad quæstionem facti, non respondent judices sed juratores.*' For jurors are to try the fact, and the judges ought to judge according to the law that ariseth upon the fact, for *ex facto jus oriture.* . . . Now, suppose the jury sworn in a cause should declare to the court what evidence was competent or relevant to the issues they were to try, and what, in their view, should be the law governing the contest between the parties. Would not such a proceeding be regarded as extremely irregular and wholly unjustifiable? And why would it be so regarded? Simply because in so acting the jury would transcend the province assigned them by their duty; because they would not be conforming to the maxim *ad quæstionem legis non respondent juratores sed judices.* . . .

"In accordance with the maxim quoted from Lord Coke, may be cited other authorities of great weight. Thus, in the case of Rex *vs.* Poole, to be found in cases in the King's Bench, in the time of Lord Hardwicke, it is said by Hardwicke, C. J., that 'it is of the greatest consequence to the law of England, and to the subject, that the powers of the judge and the jury be kept distinct; that the judge determine the law, and the jury the fact; and if ever they come to be confounded, it will prove the confusion and destruction of the law of England.' So likewise in Foster, p. 256, it is said that 'the construction of the law, upon the facts

found by the jury, is in all cases undoubtedly the proper province of the court.'"

Being of the opinion that the Seventh Amendment secures to litigants in suits at common law in the District of Columbia, where the value in controversy exceeds twenty dollars, a trial by jury in the first instance, according to the course of the common law, that under the statutes regulating the jurisdiction, powers and procedure of such officers, such a jury trial could not be had before the justice of the peace before whom this case was tried, inasmuch as the judge exercises no functions in such a trial save to cause a jury to be summoned, to keep them together, to receive their verdict and to enter up judgment thereon, and the jury determine the competency and relevancy of evidence, and what in *their* view should be the law governing the contest between the parties, it follows that the motion to quash the writ of *certiorari* must be overruled, and that the proceedings certified into this court, being in violation of the Constitution of the United States, must be quashed.

It is so ordered.

APPENDIX II.

Documents Found in the Files of the House of Representatives of the United States.

H. R. No. 39.

A BILL

To extend the jurisdiction of Justices of the Peace in the recovery of debts in the District of Columbia.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of June next, in all cases, where the real debt and damages do not exceed the sum of fifty dollars, exclusive of costs, it shall and may be lawful for any one Justice of the Peace of each respective County within the District of Columbia wherein the Debtor doth reside, to try, hear and determine, the matter in controversy, between the creditor and debtor, their executors and administrators, and upon full hearing of the allegations and evidences of both parties to give judgement according to the laws existing in the said District of Columbia, and the equity and right of the matter, in the same manner, and under the same rules and regulations, to all intents and purposes, as such Justices of the peace are now authorized and empowered to do when the debt and damages do not exceed the sum of twenty dollars, exclusive of costs, Provided, nevertheless, that all Justices of the Peace of the said County shall be compelled upon entering judgement upon cases within their jurisdiction to enter the same in such manner as shall carry an interest thereon from the date thereof until the same shall be paid or satisfied.

2. And be it further enacted, That, in all cases where judgements shall be rendered by a Justice of the peace, it shall be lawful for the defendant to supersede the said judgement at any time within sixty days from the rendition of the same, which supersedeas shall stay execution for six months thereafter, and shall be taken by the Justice who rendered the judgement and no other, Provided such Justice is living in the County, in which said Judgement was rendered, and acting in his judicial capacity: but if such Jus-

tice shall not be so acting, then and in that case before any other Justice of the peace for the aforesaid County who may be legally acting in that capacity.

3. And be it further enacted, That the Justices of the peace within the District of Columbia, be, and they are hereby directed and it is hereby made their duty to keep a docket, and therein to record and make regular entries of their proceedings in all cases in which they shall act in virtue of their office, and they are hereby directed to furnish the plaintiffs and defendants respectively with a copy of any judgement by them rendered when required, on which copy any other Justice of the peace of the County is hereby authorized to issue execution or fieri facias in the same manner as executions are now issued by the Clerk of the Circuit Court of the District of Columbia.

4. And be it further enacted, That, if any Justice of the peace shall omit to keep a docket as aforesaid or be guilty of any other negligence or omission, by which the plaintiff (having obtained a judgment before such justice) shall lose his (or her) debt, that then and in that case the said justice shall pay and satisfy to the said plaintiff the debt interest and costs lost as aforesaid, to be recovered by plaint before any other justice of the peace who shall on proof of the fact render judgement against such defaulting Justice, together with any interest that may have accrued on the debt.

5. And be it further enacted, That, each and every Justice of the peace shall, and it is hereby made his duty, upon his resignation or removal from office, and it is also made the duty of his Executors or administrators upon the death of any such justice of the peace, forthwith to deliver to the Clerk of the Circuit Court of the District of Columbia within the County in which said Justice of the peace officiated such docket or dockets, as said Justice of the peace, so resigning, removing or dying, shall or may have had; and it shall be the duty of the Clerk, in whose possession said docket or dockets may be placed, to furnish copies of all such entries made in said docket or dockets, to persons applying therefor, and who may be entitled thereto, in the same manner, and to have the same effect, as if said copies had been furnished by the Justice so resigning, removing or dying as the case may be; and in case of the death, resignation, removal from office, or other incapacity of any person who may have acted as a Justice of the peace as

aforesaid and neglect, (on the part of himself or Executors or administrators, as the case may be) to transfer such docket or dockets, he or they shall forfeit to the United States the sum of five hundred dollars to be recovered as other penalties due to the United States.

6. And be it further enacted, That, the Judges of the Circuit Court of the District of Columbia shall not hold original plea in the said Court, of any debt or damage in cases within the jurisdiction given to Justices of the peace by this act, which shall not exceed fifty dollars exclusive of costs, any law to the contrary notwithstanding: Provided nevertheless, That nothing in this act contained shall extend, or be construed to extend, to divest the Circuit Court of the District of Columbia from the power of holding plea of any debt or damages where the same doth not exceed the sum of fifty dollars, or may be above the sum of twenty dollars, where the writ or original process issued for the recovery of the same shall have been impetrated at any time before the first day of June next.

7. (And be it further enacted, That, if either the plaintiff or defendant shall think him or herself aggrieved by the judgement of any Justice of the peace, he or she shall have the right of appeal as heretofore allowed by the act of Maryland of November 7th 1791, to the next Circuit Court according to the mode therein prescribed, except that instead of twenty shillings, the sum on which the right of appeal shall be granted shall not be less than five dollars, Provided that no appeal from the judgement of any justice of the peace to the Circuit Court of the District of Columbia, shall be dismissed because the same had not been prayed to the Circuit Court next after the rendition of such judgement, unless the Court shall be satisfied that the defendant had notice of such judgement at least ten days before the sitting of said Circuit Court.)

NOTE. The foregoing was stricken out and the following amendment inserted in lieu thereof by action of the Committee and the House:

Sec. 7. And be it further enacted That in all cases where the debt or demand doth exceed the sum of five dollars, and either plaintiff or defendant shall think him or herself aggrieved by the Judgement of any justice of the peace, he or she shall be at liberty to appeal to the next circuit Court to

be held in the county in which the said judgement shall have been rendered, before the Judges thereof who are hereby upon the petition of the appellant, in a summary way, empowered and directed to hear the allegations and proofs of both parties, and determine upon the same according to law, and the equity and right of the matter at the same term in which the said petition shall be exhibited, without further continuance or delay, unless it shall appear to the said Court, that further time ought to be given to the party applying for the same, and either of the said parties may demand a trial by Jury, or leave the cause to be determined by the Court, at their election, and in any case of appeal from the decision of a justice of the peace, the Circuit Court, where two summonses against the appellee shall be returned non est, or one attachment returned non est, and the said appellee shall not appear, the Court may proceed to hear and determine such case in the same manner as if the appellee had regularly appeared.

8. And be it further enacted, That, from and after the first day of June next no Justice of the peace within the District of Columbia before whom any judgement hath been rendered, or any supersedeas on any judgement rendered, by a justice of the peace hath been taken, shall make return of any such judgement or supersedeas to the Office of the Clerk of the Circuit Court of the District of Columbia for the purpose that the same should be recorded or filed therein by the Clerks of the said Circuit Court, any law to the contrary notwithstanding.

9. And be it further enacted, That, any Justice of the peace before whom supersedeas may be taken, or any other Justice of the peace of said County, may and shall at the request of the plaintiff, or any other person authorized by or on behalf of the said plaintiff, issue execution by way of capias ad satisfaciendum, or fieri facias against the principal debtor and his securities, or against either of them, after the expiration of the time so mentioned in the said supercedeas.

10. And be it further enacted, That, the Constables of the said District who have been or may hereafter be, duly appointed and qualified according to law, are hereby authorized and empowered to serve and levy executions issued by a Justice of the peace on judgements obtained for small debts out of Court, in the same manner and by the same process

as the Marshal of the District of Columbia or his deputies are authorized to do, and that a commission of five per cent. be allowed the constable for every sum thereon by him levied: Provided that the said Constables shall, before they proceed to the discharge of the duties required by this act, give bond to the United States with good and sufficient security, in the penalty of two thousand dollars to be approved of by any one of the Judges of the Circuit Court of said District for the due performance of the duties of a Constable, and, also, for the duties and trusts reposed in them by virtue of this act; and it shall be the duty of such Judge forthwith to have the same filed or entered on record, by the Clerk of the County in which said Constable may reside at the cost and expense of said Constable: and the said Constables shall, after this act goes into effect, make all returns, now made to the Clerk of the Circuit or County Court, to the Justices of the peace, at such times, in such manner and under such penalties as are at present established by law in rendering the same to the said Clerk: Provided that no return, judgement or execution shall be received or recorded as satisfied by the said Justices of the peace without the receipt of the plaintiff annexed to the same: Provided also that nothing in this act contained shall be construed to prohibit or prevent the Marshal or his Deputies in the respective Counties in the District of Columbia from executing or levying executions issued by a Justice of the peace for small debts out of Court, when the same are put into their hands for that purpose, in the same manner as by law they have been or now are authorized to do, but, for executing or levying such executions the said Marshal or his deputies shall be entitled to the same Commission, and nothing more, as is herein allowed to Constables in such cases.

11. And be if further enacted, That where any judgement before any Justice of the peace shall have continued for more than one year, and the said judgement had not been paid or satisfied, it shall and may be lawful for the justice, before whom the said judgement had been obtained, or any other Justice of the peace for said County to revive the same by scire facias, which shall be made returnable on a certain day, not exceeding forty days from the time of issuing the same, to the said justice or any other justice of the peace of said County; and any Constable qualified as above

mentioned, of the said County is hereby authorized and required to serve such writ of scire facias, and make due return thereof on the return day mentioned in the said writ, in the same manner, and entitled to the same fee and liable to the same penalty as in the case of a warrant issued by a Justice of the peace as directed by law in such case made and provided.

12. And be it further enacted, That it may be lawful for any Constable qualified as aforesaid to deliver, at the County Jail, to the Marshal of the said County, any person committed by a Justice of the peace on a capias ad satisfaciendum, when the case may or doth so require; and that the said Marshal or his gaoler, is hereby required and directed to take charge of such person, and the same in his custody safe keep until such person or persons shall be duly discharged therefrom according to law.

13. And be it further enacted, That the Justices of the peace be, and they are hereby authorized and empowered to issue capias ad satisfaciendum, or fieri facias, in all cases where the said Justices are empowered to render judgement by virtue of this act, or the laws already in existence in the District of Columbia.

(14. And be it further enacted that it shall and may be lawful for the several Justices of the peace within the District of Columbia to ask and receive the same fees as are allowed for similar services to Justices of the peace in the City of Baltimore in the State of Maryland by an act of the General Assembly of that State passed February the nineteenth in the year Eighteen hundred and nineteen.)

NOTE. The foregoing was stricken out and the following amendment inserted in lieu thereof by action of the Committee and the House:

Sec. 14. And be it further enacted that it shall and may be lawful for the several Justices of the peace within the District of Columbia to ask and receive for the performance of their duties under this act such fees as are allowed to said Justices for similar services by the laws at present in force in the said District.

Sec. 15. And be it further enacted, That in every action to be brought by virtue of this act, where the sum demanded shall exceed twenty dolls. it shall be lawful for either of the parties to the suit after issue joined and before the Justice shall proceed to inquire into the merits of the cause, to

demand of the said Justice that s[uch] action be tried by a jury—and upon said demand th[e] said Justice is hereby required to issue a venire under h[is hand] and seal, directed to any Constable of the County wh[ere] said cause is to be tried commanding him to summo[n twelve] jurors to be and appear before the Justice issuing s[uch] venire at such time and place as shall be therein expre[ssed], and the Jurors thus summoned shall possess the qualifi[cations] and be subject to the exceptions now existing by [law] in the District of Columbia.

Sec. 16. And be it further enacte[d that if any of the persons so summoned and returned a[s Jurors] or be challenged and set aside, the [Justice] said cause is to be tried, shall dire[ct the constable to summon and return forthwith a tales, [such] subject to the same exceptions as t[he Jurors aforesaid, so as to make up the number of twelve [after all causes of challenge are disposed of by the Justi[ce, and the said twelve persons shall be the Jury who sh[all try the cause, each of whom shall be sworn by the Justi[ce well and truly to try the matter in difference between [the parties, and a true verdict to give according to evid[ence, and the said Jury being sworn shall set together a[nd hear the proofs and allegations of the parties in public[, and when the same is gone through with, the Justice sha[ll administer to the constable the following oath, viz:

"You do swear, that you will [keep this jury together in some private room without mea[t or drink, except water; that you will not suffer any pers[on to speak to them nor will you speak to them yourself, [unless by order of the Justice, until they have agreed on [their verdict."

And when the jurors have agre[ed on their verdict they shall deliver the same publicly to t[he Justice, who is hereby required to give judgement forth[with thereon and the said Justice is hereby authorized to issue [execution on said judgement, in the manner and under the [limitations hereinbefore directed.

SEC. 17. And be if further enac[ted, That in addition to the fees herein before provided, for [trials before Justices, there shall be allowed to the Ju[stice for issuing a venire facias 25 cts & for swearing the [jury 12½ cents—to the jurors sworn to try 12½ cents ea[ch & to the constable for summoning the jury 37½ cents.

A Bill to produce an uniform mode for the Collection of small Debts, and for other purposes in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled that so much of the 11th Section of an Act entitled "An Act concerning the District of Columbia" passed on the 2nd day of March 1801 as limits the Jurisdiction of the Justices of the Peace to Twenty Dollars exclusive of costs; and as directs them to receive for their services, the same fees, which were allowed in the State of Maryland, for the like services. And that so much of an act entitled "An Act additional to and amendatory of an act entitled "An Act, concerning the District of Columbia" passed on the 3rd day of May 1802, as relates to executions issuing from the Clerk's Office, be, and the same, from and after the 1st day of April next, are hereby repealed.

SEC. 2. And be it further enacted, that from and after the said first day of April next, the Justices of the peace in said District, shall have the exclusive power of issuing executions on judgements rendered by them respectively; which executions when issued shall be made returnable to the justice issuing the same, at any time not exceeding Thirty days from the date thereof.

SEC. 3. And be ti further enacted, that no execution shall issue on any judgement of a single majistrate, on the Body or Effects of any person or persons, provided that such person or persons go before any Justice of the Peace of the County, within forty days from the rendition thereof, together with one or more sureties, as the Justice may approve of, confess judgment for the Debt and costs; with stay of Execution; which confession and surety, shall be a sufficient supersedeas for Six months from the date of said confession, for all sums over ten Dollars; and Three months for all sums of, and under Ten Dollars. Provided nevertheless, that Executions may be issued on any Judgment of a single Majistrate in said District at any time within forty days from the rendition of such judgment, provided such judgment shall not have been superseded. And it shall be the duty of the Justice who takes such superdeas, to reckon legal Interest on the amount of the debt until the same shall become due, which Interest added to the principal and costs shall be included in the supersedeas Bond.

SEC. 4. And be it further enacted, that from and after the said first day of April next, the Justices of the Peace in said District, shall have cognizance in personal Demands to the value of Forty Dollars, exclusive of costs.

SEC. 5. And be it further enacted, that the Justices of the Peace for the Counties of Washington and Alexandria, from said and after the first day of April next, shall enter on a Docket or Record, to be kept by them, for that purpose; all warrants and summons's by them issued, as well as their Judgments and Costs distinctly stated, and also their Executions. And it shall also be their Duty to file all such original warrants, summons's and Executions so returned in their office, for the inspection of those concerned.

SEC. 6. And be it further enacted, that in case of the Death, resignation or disqualification of any Justice of the Peace in said District, any other Justice of the Peace within the same County and District, may receive the Docket or Record kept by such Justice so resigned, deceased or disqualified and proceed to act on any unfinished business in the same manner, as if the business had been commenced by himself.

SEC. 7. And be it further enacted, that from and after the said first day of April next, all warrants for debt, under the jurisdiction of a single Majistrate, shall be drawn in the nature of a summons, that is, for the defendant be-summoned to appear at some particular time and place, before some Justice of the Peace, in the same County to answer unto the plaintiff in a suit, then and there Pending; and in case the defendant shall not attend, agreeably to a summons on him, or her, or them legally served, either in Person, or by Attorney, or render any reasonable excuse for his or her non attendance; the Justice may, after a sufficient lapse of time, discretionary with himself, proceed to give judgment in favor of the Plaintiff by default of the Defendant.

SEC. 8. And be it further enacted, that the following fees shall be allowed to the Justices of the Peace in said District, from and after the said first day of April next, for the following services, that is to say

For Issuing a Summons for Debt.....	$ .12½
" Every subpoena for one or more witnesses	.12½
" Venire to summons Freeholders.....	.25
" Capias ad satisfaciendum and filing the same...	.25

For	Issuing a Fieri Facias and filing the same.....	.25
"	" Sciere Facias and filing the same.....	.25
"	Every Supersedeas Bond 12½.....	.25
"	Every Oath or Affidavit	.06¼
"	Probating account 6¼.....	.12½
"	Every Judgment rendered and recording the same 12½	.25
"	Every Commitment.....	.25
"	" Releasement..	.25
"	" Warrant of Attachment.....	.25
"	" Venire, to Summons a Jury for forcible entry and detainder.....	.75
"	Taking an Inquisition and making return thereof.....	4.00
"	Warrant of Resolution.....	.75
"	Taking an acknowledgement of a Deed.....	.25
"	Taking any other acknowledgement.....	.12½
"	Taking an Appeal Bond.....	.25
"	Taking a Bail Peace to the Circuit Court.....	.25
"	A Pass.....	.25
"	Certificate of Estrays.....	.37½
"	Receiving complaint, and issuing a warrant in all criminal cases.....	.25
"	Recognizance to keep the peace, or appearance at Court.....	.25
"	Taking Depositions, authorized by any Court the sum of $2 per Day.....	2.00

SEC. 9. And be it further enacted, that from and after the first Monday of April next, there shall be a board of Majistrates in the County of Washington in said District, consisting of all the Justices of the Peace of said County any seven of whom shall be sufficient to constitute a quorum, who shall annually thereafter meet on the first Monday of April, and appoint as many Constables, for the said County as they may deem necessary, to serve for one Year, and untill a new appointment shall have been made.–

SEC. 10. And be it further enacted, that the Levy Court in the County of Alexandria in said District; from and after the said first Monday of April, shall annually thereafter, on the first Monday of April, appoint as many Constables in said County as aforesaid, as they may think necessary, to serve for one year, and untill a new appointment shall have been made as aforesaid.

SEC. 11. And be it further enacted, that the Constables thus appointed in the Counties of Washington and Alexandria, shall have all the powers, and execute all the duties, heretofore enjoined on the Constables, which were appointed by the Circuit Court of the District of Columbia, and shall before they enter on the duties of said office, take the usual oath before the Mayor, or some other Justice of the Peace for said Counties, for the faithful discharge of the several duties incident to said office; and shall also find one or more sureties, as shall be approved of by any two Justices of the Peace for their said Counties, in the sum of Five Hundred Dollars for the faithful discharge of the duties of said Office, and also for the punctual payment of all monies, for Debts and Costs, Distress for Rent, Collections of Fines; Private Debts, or in any other manner that shall come into their hands by virtue of their office, and that they shall make return of all warrants, summons' and executions directed to them, and in no case to exceed Forty Days for all Warrants and Summons's and not to exceed 30 days on all executions from their dates respectively. All Executions must be returned to the Justice of the Peace who shall have issued the same. It shall be the duty of the Constable who makes such returns, to endorse thereon the time of service.

SEC. 12. And be it further enacted, That the Constables of said District, shall, from and after the first day of April next, shall receive the following fees for the following services—that is to say:

For serving a Summons on Defendant for Debt.....	$0.33⅓
" A Summons on Witnesses each.....	.17
" Return and service of a CaSa or Fifa.....	00.50
and that a Commission of 8 pr cent be allowed the) Constable, for every sum thereon by him levied.....)	
Serving a Warrant for assault and Battery warrant) for theft, search warrant, or any other warrant of) a criminal nature .....)	.50
Carrying any person to prison, who shall have been) arrested for breaches of the Peace, or any other) misdemeanor, and who shall have neglected or re-) fused to give security	.50

SEC. 13. And be it further enacted, that the Costs for issuing and serving warrants in cases of assault and battery,

warrants for theft, search warrants, and all other warrants of a Criminal nature, shall in the first instance, be paid by, or made liable to, the Complainant, and if the party against whom a warrant shall have been issued, shall, on trial, be found guilty of the charges preferred against him, or her, the person thus found guilty, shall be liable to the costs which may have accrued; and on neglect or refusal to pay the same, may be committed to close confinement, until his or her compliance. Provided, nevertheless, that in all cases when any person shall be essentially injured by another, either by assault and Battery, theft, or any other way, of a Criminal nature, on complaint being made to any Justice of the Peace within the County, and the said Justice having good reason to believe, that the complainants charges are well founded, it shall be the duty of said Justice to issue his warrant to arrest the Criminal, notwithstanding he may not receive from the Complainant, any compensation Therefor,

SEC. 14. And be it further enacted, that in all cases where the Debt, or demand exceeds Five Dollars, and either Plaintiff or Defendant, shall think him or herself aggrieved by the judgment of a single Majistrate, he or she, shall be at liberty to appeal to the next Circuit Court, before the Judges thereof, who are upon the petition of the appellant, in a Summary way, empowered and directed to hear the allegations and proofs of both parties and determine on the same according to Law and the equity and right of the matter. The same Court in which the said petition shall be exhibited shall determine on the same without any further continuance or delay, unless it appears to the satisfaction of said Court, that further time ought to be given to the party applying for the same, to enable the Court to determine the cause according to Law and the equity and right of the matter, no Execution rendered upon any judgment of any Justice of the Peace shall be stayed or delayed, or any supersedeas on such judgment, granted, upon any appeal, unless the person or persons appealing, or some other person on his or her behalf shall immediately on making such appeal enter into Bonds with sufficient surety, such as the Justice, by whom the Judgment shall have been given, shall approve of, in double the sum recovered.

SEC. 15. And be it further enacted, that any act, or parts of acts of Congress which comes within the purview of any of the provisions of this act, be, and the same after the first day of April next are hereby Repealed.

The foregoing Bill has been agreed upon at a general meeting of the Justices of the peace for the Counties of Washington and Alexandria, convened agreeable to Public notice on the 7th day of February 1814.

James M. Varnum
Secretary.

Abraham Faw
Chairman.

Alexandria 23,Feby. 1814.

Dr. Sir

I communicated to the Justices here the purport of the bill handed you with the Petition of certain other Magistrates, Praying Congress to amend the Laws of the District, relating to the collection of small Debts, that part of the bill which Increases their Jurisdiction to Forty dollars, was the part most dreaded here—but on Examining the Constitution of the United States, the 7th Section of the Amendments, the case is provided against It declares that in all suits at common Law where the value in controversy shall exceed $20, the right of trial by Jury shall be preserved &c. It is supposed this must have Escaped the Petitioners when they handed you the Bill and as that appears to be the foundation of the other sections they will probably withdraw it, should they not do so the Justices of this County will express to Congress their belief that no change is wanted by the people of Alexandria County. there are Eighteen Gentlemen in the Commission of the Peace here only five of whom have signed the Petition before you.

I am wth Great Resp^{t}
Yr. Very Hbl. Serv.
L Deneale.

MEMORIAL

of Sundry Justices of the Peace & inhabitants of the district of Columbia against any alteration in the laws for the collection of debts.

To the Hon^{ble}. Senate and House of Representatives of the United States of America.

The memorial of the undersigned Justices of the Peace and other Inhabitants of the county of Alexandria in the District of Columbia, respectfully represents,

That your memorialists have heard, with concern, that a petition from some of the Justices of said county has been lately presented to Congress alleging divers defects and inconveniences in the existing laws; and also that a Bill founded thereupon has been offered, which grants to the Justices an extension of jurisdiction, and an augumentation of fees. Your memorialists conceive that the contemplated extension of the jurisdiction of single magistrates, to sums not exceeding forty Dollars, is subversive of the inestimable privilege of the trial by Jury; repugnant to the 7th Article of the amendments to the Constitution of the U.States; and hostile to the spirit of the 11th Article of the Bill of Rights of Virginia, which, unless repealed by Congress, is still the law of this portion of the District of Columbia.

Your memorialists are of opinion that an increase of the fees of Magistrates is, at this time, unnecessary; that the power, granted by S Bill, of committing the debtor to close confinement, by warrant of a magistrate is contrary to the established usages of the land, & that the privilege of appealing to the Circuit Court in all cases, where the debt exceeds five Dollars, will be productive of litigation, and may be converted into an engine, oppressive and ruinous to the Poor.

Several other provisions of this Bill they are apprehensive, would eventually prove injurious and mischievous to the good people of this county. Your memorialists are therefore of opinion that the prayer of the said petition is unreasonable, and ought not to be granted.

Alexandria, 25th February 1814.

Wm. Fowle,	R Veitch
A. Moore	Jno. Richardson, J. P
Robert Conway	N. S. Wise
John C. Ladd	Jno Scholfield
Phineas Janney	William Fox
Newton Kune	John D. Brown
Thos. Semmes	Wm J. Lee
Wm. Smith	Thomas Moore
Charles Bennett	Horatio C. Scott
Charles Lee	Wm. H. Brown

J Sandelboy
John Tucker
John A. Stewart
Jno. McKnight
Jn B. Paton
Jas Douglas
James Carsen Tower
W. Kennedy
Richard L. Hewitt
Chris. McNealy
W. A. Adams
Nehem S. Carson
Peter C. Keith
Thos. Janney
Richard Stanton
Andrew Hopkins
Dan McLean
C. Page
F. Fairfax
Cam V. Griffith
I A. Ruth
Wm Wilson,
T. Mountbow, Jr.
James McGuire
J. Swift
Wm Stewart
P. Triplett
James C. Deneale
J. Anderson
Wm Washington
JnO Roberts
Wm. Pelham
William S. Moore
Hugh Smith
Mordecai Miller
M Lloyd
Robt. M. Harrison
Thos Laurason
J. D. Simmy
R Taylor

Dwight Metcalf
S. Marsteller
C. P. Thompson
Thomas Vowell
And. W. Jamieson
John Muncarter.
Ch. Alexander
Jonah Thompson
Jacob Hoffman
Ch. Simms
} J of P
F. Peyton
L. Deneale
Chas. J. Catlett
John Mandeville
Joseph Mandeville
N. Herbert
Thomas Irwin
John Hooff
John Jackson
O T Ramsay
Berthurst Dangerfield
W. Yeaton
Jacob Morgan
D. Minot
Geo. Wise
Nath J. Taylor
Chas. Worthington
C. Z. Whiting
Robert Anderson
Thos Langdon
John Janney
Randolph Mott
John Muir
Anthony Rhodes
Craven T. Peyton
Bryant Hampsan
James Harper
Jno. Ross
James Rathbone

To the Senate and house of Representatives of the United States of America in Congress assembled.

The memorial of the Mayor, board of Aldermen and board of Common Council of the City of Washington, respectfully sheweth.

That the inhabitants of this City have suffered great inconvenience, and incurred heavy losses and expenses by the jurisdiction of Justices of the peace being limited, as at present, to the sum of twenty dollars—and it would tend very essentially to their prosperity, if the jurisdiction of Justices were extended to debts amounting to fifty dollars. That a creditor often prefers a relinquishment of a part of his debt, so that he may reduce it to the present amount of a Magistrates jurisdiction, in order that he may avoid the delays of prosecution in the Circuit Court. That the expense of a suit in the Circuit Court frequently exceeds the amount of a small debt, and these expenses are entirely lost, if the debtor should, which often occurs between the institution of the suit and the rendition of the judgment, prove insolvent. That since the severance of this county from Maryland, from which State have been derived the principal part of our laws, it has been found necessary to extend the jurisdiction of Magistrates in that state to the sum of fifty dollars, and the same reasons of policy exist for a similar extension of their jurisdiction here.

Your memorialists further submit, that by the present mode of appointing Constables, many unworthy persons are appointed, and it is, with due deference, believed, that if the power to appoint them were vested in the body of Magistrates, who more generally mix with the people than the Judges of the Circuit Court, more judicious appointments might be made.

They therefore pray that a law may be passed to carry into effect the foregoing objects—And as in duty bound &c.

Saml. W. Smallwood, Mayor

W. W. Seaton
U. Weightman
Geo. Watterston
And. Hunter
} Committee.

To the Honorable the Senate and House of Representatives of the United States of North America in Congress assembled.

The petition and remonstrance of the undersigned citizens of the Town and County of Alexandria in the District of Columbia—respectfully shew, that they have seen a bill reported to the House of Representatives on the 10th of January 1822 by the Committee of the District of Columbia, entitled "A bill to extend the jurisdiction of the Justices of the peace in the recovery of debts, in the District of Columbia. Your petitioners feel themselves bound to lay before Congress their objections to this Bill—which they flatter themselves will be satisfactory to Congress. The professed object of the bill is to expedite the recovery of debts of fifty dollars or under. This will not be the effect of the bill—It will not only delay but increase the expense of the recovery of such debts—It will delay the recovery 1st Because the party defeated may, if the demand is above five dollars, appeal to the Circuit Court—after that Court has decided the case, the party has sixty days to take out a supersedeas, which if he does will suspend the Execution six months longer. This provision of the law will be found as dilatory in practice as that of bringing suits in the Court. 2nd. It will not save expence but increase it. It is almost certain that all who can *will* avail themselves of the delay which the right of appeal and of giving a supersedeas will produce, the consequence will be an increase of expense to the Debtor.

The provision of the Bill which authorizes Justices to issue executions on their Judgements and to keep a docket and record of their proceedings is in part exceptionable. The magistrates ought to keep a minute of their proceeding. But the public convenience will be much better consulted, by requiring the magistrates to return, as the law now in force does, all the papers in the cases they try to the Clerks Office and let executions issue from that office. It was the practical inconvenience which formerly existed, which induced Congress to alter the law and require the papers to be returned to the Clerks Office and the executions to be issued by him. The papers are all preserved in one place and a Docket of all the executions kept in the place, where those interested might apply for any information they need concerning any case decided on by a Magistrate. The

mode contemplated by the present bill, is insecure and troublesome—insecure, because the papers and docket are to be kept in a private house; and troublesome because there may be a dozen or more places, where a person not a party to the case, who may need information, must apply before he can get the information which the papers or docket would afford him. The Bill contemplates increasing the Magistrate's fees- This may be right, but there is no table of fees in the bill.- It refers to a law of Maryland, which is not accessible to the people in general—at least of Alexandria County. The Magistrates may charge no greater fee than this Law allows. But if they do how is the error to be detected? The party injured who, most probably is a poor man will have to send to Maryland to know what are the fees allowed for certain services to the Magistrates of Baltimore by the Law of that State passed in 1819. The Bill also provides that if a party loses his debt, by means of the neglect or omission of the Justice, who renders the Judgement, that the Magistrate shall be answerable for the debt thus lost—According to the bill, the negligent Magistrate may be tried before a Magistrate who may have himself been negligent—and how is the neglect to be proved? All the papers documents and docketts are in the possession of the Magistrate charged with the neglect—The Bill does not provide that any person may have any right to examinine the Magistrates Docket—all it provides is that he shall furnish either party with a copy of the Judgement.

The most serious objection in the opinion of your memorialists is that Congress has not the power to extend the jurisdiction, in the mode contemplated by the bill, of a single Justice of the peace to any sum above twenty dollars,— By the 7th Amendment to the Constitution it is declared, that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved."

Your memorialists feel confident, that Congress will not sanction a provision which is in the very teeth of the Constitution. The extending of the jurisdiction of a single magistrate, when it is recollected, how totally uninformed they generally are of Judicial proceedings, and how they are selected, is a subject that in the opinion of your memorialists requires to be well weighed. Some of your memorialists are too well acquainted with the mode often adopted by Magis-

trates in the administration of Justice. They are too apt to disregard all law and usage—and adopt their crude notions of law and right. Some of us could recount cases, which will not bear examination. Your memorialists are well satisfied that neither Justice, public convenience, or any sound principle of policy requires the passage of the bill now before the House of Representatives—or that the Jurisdiction of the Magistrates should be extended in any form, even with the right of empanelling a Jury. For a single magistrate to empanel a Jury to try a case before him, would be increasing expence and delay without ultimately attaining the ends of Justice. Experience has taught some of us that the remedy would be worse than the evil.

All of which your memorialists respectfully submit.

Thos Swann	Wm Evans
R. J. Taylor	Isaac Robbins
P. R. Fendall	Thos Bladen
Thomas F. Mason	Oliver Norris
M. L. Ball	Jacob Hoffman
Michael McCloskey	W. Yeaton
D. Minor	Jno D. Herbert
Presley Barker	F W. Hewitt
Samuel Mark	J. T. Ramsay
H. W. Ashton	R. C. Mason
Robt. Barry	J. L. Smoot
Edw. Pitman	Dav M Black
Geo. Coleman	William W. Scott
Jas Allison	
Alfred Lee	
A. M. Rose	Benj. C. Wood
John I Stewart	N Herbert
John H. Duffey	M Herbert
B. Hampsan	M Bayly, Jr.
Jos H. Hampsan	B. B. Ashton
Wm Harper, Jr	Mann Randolph Page
Wm Harper	Chas C. Lee
Th. T Bracchus	Colin Auld
Thos. L. Martin	W. A Harris
West Ashton	Hugh Smith
Francis Peyton, Junr.	A. L. Bonner
J. S. Scott	Wm L. Cranell
Thomas Mount	Sam M. Janney
Jas. Douglas, Jr.	H. Clagett

A. O. Douglas
Edwd. J. Lee
M Lloyd
A. .Newton
Edw. Stabler
Wm Stabler
Wm P. Burn
Samuel Harper
R. T. Ramsay
R. W. Poor
J. L. McKneud
Benj. C. Ashton
Jno. Popham
C. I. Lee, Jr.
John Hooff..
John Grubb
John A. Jones
P. H. Minor
W. H. Rice
Francis Steell
Richd. H. Clagett
J Vase
Pharez Shoop
Charles Scott
Anb Vase
Charles Bennett
J. B. Mikolls
Jacob Morgan
Nath. Battes
C. P. Thompson
Bathuse Dangerfield
J. H. Hooe
James Heithburn
C. Page
Mordecai Miller
Marsteller
Jno C Powell
Lewis Hooff
S Snowden

PETITION

From Citizens of Alexandria in favor of the Extension of the jurisdiction of Magistrates.

The Memorial of the undersigned inhabitants of the Town of Alexandria, beg leave respectfully to represent to your Honourable Body, that they have seen, with the liveliest emotions, a Bill before your Honourable Body extending the Jurisdiction of the Magistrates in the District of Columbia, in as much as they believe it will both expedite Justice, and greatly lessen the expence in the attainment thereof—That the Law wou'd be a salutary one, and highly acceptable to the people—That it wou'd lessen the burden of the debtor in defending, and facilitate their recoveries in prosecuting their Just claims—That it wou'd destroy that undue priviledge which the unjust debtor now has over the creditor, under the existing state of things, which enables him to protract recoveries for small sums, as long as for large ones, thereby compelling the creditor either to com-

promise at the will and pleasuref the debtor, or go to Law, and in the interim to submit to very deprivation and distress, superadded to which in may cases their total inability to advance the required Fee to ı attorney to commence a suit for the prosecution of a Jt debt, amounts to almost a denial of Justice.

It is well known to many of yo memorialists that suits have been instituted in the Courf this County, where the debt in controversy did not exed 40$ and yet the legal fees taxed to the attorney alor amounted to 15$ towit 5$ against the drawer, and 5$ ch against two endorsers, making the 15$ besides the exnces of Clerk and other fees in three distinct suits, and s in proportion for every endorser, when one suit before single magistrate wou'd have subserved all the purposes the many in Court.

Your Memorialists have leaed with surprise, that a petition has been got up, adver to this bill, a course as unlooked for as it is manifest incompatible with the public good and that they have hesitation in saying, as their well grounded opinion, that–5 of the people of this Town, are decidedly in favour of he passage of the bill in question, and that those, with wom the opposition to it, originated, they feel authorised saying, are particularly & personally interested therein.

Your Memorialists feel particarly gratified to observe in this Bill, a provision for debts under twenty dollars, by giveing power to the Magistrat to rule the defendant to give bail, it having been heretofo a source of much evil and generally considered a publi Grieveance.

Your memorialists deem it tir duty to state that so satisfied are they that your Honrable Body would have exercised a sound and proper distion in this matter, that they wou'd not have ever thoug it necessary to trouble your Honourable Body with th memorial, but for fear, that their silence upon the subje might imply an acquiescence in the wishes of those whose personal interests (generally speaking) have induc them to sign one of an oppisite character. and in duty ound will ever pray &c

Matthias Snyder	H. . Whitney
Saml. Morrow	Cha es C. Smoot
Danl. Shryor	Jon han Field

	his
William Isabell	James x Curry
	mark
Richard Howell	James Robinson
	John H. Evans
Robert Fulton	Benj. Dyer
Jan[a] C. May	Sam[l] Simmons
C. A. Swain	Jeremiah Grimes
	Arch McClean
John McDonald	Thomas C. Juley
David Hill	Louis H. Labills Jr.
John Creaighton	George Drinker
Henry Bayne	Joseph Brodus
Richard Wilkinson	James Allison
Wm Reynolds	Loudan Campbell
William Stewart	Philip P. Johnston
Henry Yeader	Daniel Wright
Ephrain Evans	Richard Rack
David G. Pultzman	George Swain
John Suter	John Boyd
James MacKensie	Zack Gardner
David Dick	Wm. Millan
Joseph Plumb	H. Webster
Isaa Sleigh	Thos. H. Donaldson
John Shakes	Thomas Allen
Thos Steel	Carlo Columbas
Jas. Vansant	Geo. Jacobs
Richard Emberson	Mahken Schofield
Issac Robbing—retracting from his signature against the Law—on mature reflection.	
N. R. Fitzhugh	Samuel Peach
Jas. D. Kerr—retracting from his signature against the Law on mature reflection.	Gregory Plummer
	John H. Wilbur
John C. Goverman	J. B. Rookes
	his
L & L Chamberlain	John x Wiggs
	mark
J. Shackelfor	Saml. Lindsay

Jonah Isabell
Thomaws Withington
Thomas Taylor
John Z Sanner
Allen P. Lellane
John P Walkam
William Powell
Albert P. Waugh
Wm. C. McMechen
J. C. Bouwers
Wm Harry
Augustus Bultz
John Carnel
George Painter
Sam Bunting
Josiah H. Davis
Edw. Corning
Thomas M. Davis
Andrew Schofield
R. H. Clements
Thos Sanford
James McGuire
Saml Smith
Jesse Whery
Sam Messersmith
E. Corning
John W. Cobb
Henry Chattam
Frederick Luckett
Henry P. Williams
Thos Massie
Ewd. C. Fletcher
John R. Jackson
Jas. C. Ledwick
Benj. Waters, Jr.
John Hollensburg
John Cohagan
his
Henry x Posey
mark
William Wood
Caleb Vernon
John Mark
Henry Hobb
John Wood
W. B. Wilson.

The Petition of the undersigned, Citizens of
in the District of Columbia,

RESPECTFULLY REPRESENTS: THAT,

At the first session of the sixteenth Congress, a petition was presented, signed by the inhabitants of Washington generally, for the extension of the jurisdiction of Magistrates in the District of Columbia: That a committee of your honorable body, after a patient investigation of the merits of the subject, reported a bill, at the same session, for carrying that object into effect, which was not adopted, we have believed, because of the pressure of business of an important national character:

That the Mayor and Board of Aldermen, and Board of Common Council, of the city of Washington, have drawn the attention of your honorable body to this subject, at your

present session, and a committee of your honorable body has promptly and kindly reported a new bill, the general provisions of which meet with the wishes, decidedly, as your petitioners believe of the great mass of the population of this district: although efforts have been made by a few designing men, whose interests will be affected by this measure, to produce a contrary impression on your honorable body:

That it is not the intention of your petitioners to enter into arguments on either the constitutonality or expediency of the measure in question: The constitutionality of it, being, as they believe, established, by the decisions of twenty-one, is not twenty-three, of the states and territories, in their Legislatures and Courts; and by a decision of the Supreme Court in a case which involved the same principle. Its expediency comes home to the business of every individual of this community, and, we trust, will be apparent to the experience and wisdom of Congress:

The object of this petitioner is simply to aid our fellow citizens of Alexandria and Georgetown in making known to your honorable body, that the *general provisions of the bill referred to meet with the decided approbation of your petitioners; and to pray, that it may be passed into a law, as soon as the consideration of important national objects will permit*; together with such amendments, (if any be wanting), as, to the wisdom of your honorable body, may seem meet and proper.

T. Winn	George Collard
S. P. Young	Warder Bayly
Alex M. Williams	Wm Ratcliff
James Rhodes	Henry Aukward
Thos Sayres	Peter Little
Richard Shekel	Wm Lambell
Abiyah Peck	Seth Robinson
Christopher Fell	Jeremiah Perkins
James Jones	James Scallan
J. Doemetz	Lewis Larner
William Praeet	Lawson Pearson
Jon^{a} Prout	Lancitot Griffin
Francis Cross	J. Skerett.
Andw. Forrest	John Jenkins
Jeremiah Hammett	Philemon Moss
Geo. Adams	Thos. Sangston
Wm Sheriden	Edwd. Douglas

Thos. Munny	Alexander Boothe	
Thos. Reynolds	Stephen Rigden	
Jno Thomas	George Duckworth	
R. Blanford	Joseph Venable	
John F. Speiser	Ja. Carbury	
Henry Hannah	Edward W. Clark	
John Winmon	Robt. E. Searcy	
Robert Clark	Israel Little	
Robert Brown	Matthew Wright	
Francis Hayse	Peter Pearson	
Owen McCall	William Elder	
Nicholas Cassidy	Wm. M. McCauley	
W. Wood	Alex Forrest	
Thos J. Coffer	John B. Forrest	
Adam Loyd	M Brilley	
G Chapin	John David Ahl	
Lev. B. Simmons	Jas. Owner	
C. Jones	Jas Vermillion	
John H. Beall	Nathaniel Carsen	D. C. Mgr.
John B. Hoote	James Morrison	
Samuel Hilton	B. Thomas	
Thos. Fingey	Jacob Smull	
Mord. Booth.	Edward Boothe	
H Capin	Henry Boothe	
Rich Barry	James Degges	
Richard O Hare	Thos Roby	
Benjamin King	Richard Wildey	
George B. Scott	Charles Rette	
Thomas Reddish	John Cook	
Thomas Lynall	Saml. Townsend	
Samuel Fowler	Robert Rose	
Antonio Catalano	Timothy Crowley	
Edwd. Merritt	George Cox	
Horatio Kingsbury	George Grant	
Daniel Page		
Titus Barcraft	Jesse Barnes	
John W. Smoot	Mich'l Quigley	
John Bean	Edwd. Blane	
George Bean	William Peter	
Agoston Terry	William Howard	
John Green	William Doughty	
Wm Cox	John Newland	
Tobias Martin	Wm Easby	

Jonathan Criddle
Sam B. Ellis
Joseph Johnson
George Lee
Valentine Pomax.
Jas D. Woodsen
Richard Wilson
Richard McClosky
Thomas Clark
James Crandle
John Speiden
Jno. B. Ferguson.
Wm. Owner
Thomas Whitefield
James Friend
Abm. Fowler
W Crittenden
Wm Buckingham
N Millikin
Philip Stuart
W. H. Gunnell
H. V. Hill
Thos Hughes
John Queen
Fredk Cana
John Pic
W. W. Goldsborough

Joseph Fowler

H Braner
Solomon Graves
Henry A. Lowe

Jas Clare
Gustavus Poudret
John Dunn
William H. Barnes
John Hoovere
William Smith
William Nottingham
Geo. W. Cauron

James Bury
Benj. King
Wm Thomas
James Tucker
Ahial Cannon
Dennis Osborn
Henry Ingle
Geo Beal
W. A. Bradly
John H Reily
John McClelland
Rob. Clarke
Jamus Spalding
B. Bryan
Enoch Bryan
Wm L. McPherson
Matthew Trimble
Lewin Talburtt
Thos Howard
Chas. Venable
Philip Otterback
Nicholas Vickery
David Young
William Cross
Jesse Evans
Thomas Foote
Andw Brown

Wm x Rider
his mark

Joseph Fugitt
Thos H. Brown
Erick Sanderson
Alexander Talburt
D A McMunson
James Towley
James Middleton
Jos Ingle
Th. L. Thruston
J Harlow
Philip Reily
John Collnen

John Sanford
Charles Hamilton
William A. Riley
John Fisher
Abraham Connor
David Cook
Thomas Vaile
Mikel Carroll
James Winseth
Saluadora Catalano
Barney O'Donnell
James Flynn
Michael Mahoney
W McCormick
H. McCormick
Daniel O'Donnell
Hugh O'Donnell
Moreton Colins
John Lane
James Johnston
David Watterston
Zaihabia Hazel
Daniel Goldridge
John Nevitt
Samuel Geulding
Jos Thorbaug
Borthick Gillespie
Walter Reynolds
James Byrne
Wm Austin
James Williams
John Jones
Giovanni Androen
L. Edgar
Johna Couche
Joseph F Marsbee
Pringle Slyt
Lawrence Flynn
Dillen Hodgson
Philip Ennis
Theo Pettigrew
Simeon Matlock

Patrick McGoughar
John Lynch
Patrick McGovern
John Holohan
James Sweeny
William Preston
Michael Firmen
D Homan
James Ewell
Alexander Rocke
James Clark
William Sutherland
William Whitelaw
John Bonthron
John Daur
Peter Miles
William Smith
William Allridge
R. P. Sherwood
Philip Morgan
R Turnbull
Michael Lupton
John Graham
John Bottomley
James Goodwin
Patrick Hefferman
James O Reele
Robert Wood
Robert Craig
John Logan
Thomas McIntosh.
George Philip
Francis Tardella
Jeane Pierre
Thomas Hirchel
C. B. Hamilton
Saml P. Lowe
Benjamin Bean
Adam Lindsay
Wm Ingle
Thos Fowler
W Deans

Charles H. Varden
Jacob Denemen
Chas. B. Collan
George Sanford
Wm R Maddox
Thomas Cross
James White
George Lake
Benj. Kinley
Robert Scallan
Ignatius F Wisemon
John Spalding
Samuel Black
John Gulloway
Robard Taskey
John Mack Daniel

William Wise.

Thos Holliday
Mac^{e} Carroll
Thos Goodall
Charles Kelley
William Willis
Cornelius E Turk
Bennet Goddard
Saull Hardman
Walter Hutchinson
Thos Williams
Jos Martin
John Judge
Joshua Willis
Walter Langley
Richard Cole.
John Mace.

John T. Laskey
Jarvis Pumphrey
W Witherspoon
Charles Griffin.
John Brannan
Monahan Slater
Benedict Miles
Henry Lurtz
Charles Langley
Horace Frazier
James Curlow
Patrick Frevy
James Walsh
James Mackey
Moses Baken
Leonard Rush

his
Jonas x Marshal
mark

Frederick Own
Michael O'Brien
John Paine
Washington Duwall
Thomas Gibson
Patrick Kain
John McDonald
James Earby
Stanslaw Rigsby
Friederich Bopp
William Jones.

To the Honorable the Senate and House of Representatives of the United States of North America in Congress assembled.

The petition and remonstrance of the unsigned, citizens of the Town and County of Alexandria, in the District

der
^

of Columbia. Respectfully shew that they have seen a Bill reported to the House of Representatives on the 16th of January 1822, by the Committee of the District of Columbia, entitled "A Bill to extend the Jurisdiction of the Justices of the peace, in the recovery of debts, in the District of Columbia". Your Petitioners feel themselves bound to lay before Congress their objections to this Bill, which they flatter themselves will be satisfactory to Congress. The proposed object of the Bill is to expedite the recovery of debts of fifty dollars or under. This will not be the effect of this Bill. It will not only delay but increase the expense of the recovery of such debts. It will delay the recovery, 1st Because the party defeated may if the demand is above five dollars, appeal to the Circuit Court, and after that Court has decided the case, the party has sixty days to take out a supersedeas, which if he does will suspend the execution six months longer, this provision of the law will be found as dilatory in practice as that of bringing suits in the Court. 2d. It will not save expense, but increase it, It is almost certain that all who can will avail themselves of the delay, which the right of appeal and giveing a supersedeas Bond will produce, The consequence will be an increase of expense to the debtor.

The provision of the Bill which authorises Justices to issue executions on their Judgments, and to keep a Docket and record of their proceedings is in part exceptionable,— The magistrates ought to keep a minute of their proceedings, But the public convenience will be much better consulted, by requiring the magistrates to return as the law now in force does, all the papers in the cases they try to the Clerks office and let executions issue from that office. It was the practical inconvenience which formally existed which induced Congress to alter the law and require the papers to be returned to the Clerk's office, and the executions to issue by him—The papers are all preserved in one place and a Docket of all the executions kept in one place; where those interested might apply for any information they need concerning any case decided on by a magistrate. The mode contemplated by the present Bill, is insecure and troublesome; insecure; because the papers and Docket are to be kept in a private house, and troublesome because, there may be a dozen or more places where a person not a party to the case, who may seek information, must apply

before he can get the information, which the papers or Docket would afford him. The Bill contemplates increasing the magistrates fees—This may be right, but there is no table of fees in the Bill. It refers to the law of Maryland, which is not accessible to the people in general, at least of Alexandria County, The magistrates may charge no greater fees than this law alllows, But if they do, how is the error to be detected; The party injured, who most generally will be a poor man, will have to send to Maryland to know what are the fees allowed for certain cervices, to the magistrates of Baltimore, by the law of that State passed in 1819. The Bill also provides, that if a party looses his debt by means of the neglect or omission of the Justices who renders the Judgment, that the Magistrate shall be answerable for the debt thus lost, according to this Bill, the negligent Magistrate may be tried before a magistrate, who may have himself been negligent, and how is the neglect to be proved, all the papers, documents and debts are in the possession of the Magistrate charged with neglect. The Bill does not provide that any person may have any right to examine the magistrates Docket, all it proscribes is that he shall furnish either party with a copy of the Judgment. The most serious objection in the opinion of your Memorialists is, that Congress has not the power to extend the Jurisdiction in the mode contemplated by this Bill, of a single magistrate, to any sum above twenty dollars. By the Seventh amendment to the constitution, It is declared, that "In suits at Common law, where the value in controversey shall exceed twenty dollars, the right of trial by Jury shall be preserved."

Your Memorialists feel a perfect confidence, that Congress will not sanction a provision which is in the very teeth of the constitution,—The extending of the Jurisdiction of a single magistrate, when it is recollected how totally uninformed they are in general of Judicial proceedings and how they are selected, is a subject that in the opinion of your Memorialists requires to be well weighed. Some of your Memorialists are too well acquainted with the mode often adopted by magistrates in the administration of Justice, They are too apt to disregard all law and usage, and adopt their crude notions of law and right, Some of us could recount cases, which will not bear examination. Your

Memorialists are well satisfied, that neither Justice, public convenience or any sound principle of policy require the passage of the Bill now before the House of Representatives —or that the Jurisdiction of the Magistrates should be extended in any form, even with the right of empanelling a Jury. For a single magistrate to empanell a Jury to try a case before him would be increasing expense and delay, without ultimately attaining the ends of Justice. Experience has tought some of us that the remedy would be worse than the evil. The increasing the Jurisdiction of Justices of the peace beyond twenty dollars, will of course increase the number of appeals to the Court, and thereby prolong the Sessions of the Court which as an inevitable consequence will increase the expenses of the Court, now payable by the United States.

If the real object of the Bill is to expedite the administration of Justice; This can be effected in a more constitutional and less exceptionably manner, than that proposed by this Bill. Let Congress pass the body of laws which was prepared by the Judges of this District. In this Code the modern laws of Virginia, whereby justice is now more expeditiously administered in that State than in other in the Union, have been introduced.

All which your Memorialists respectfully submit.

P. E. Hoffman	Reuben S. Bowie
Wm Moss	Gusts. A. Brown, M. D.
Robt. Mandeville	T. J. Minor
A Moore	Robt. Jamieson.
Ignatius Baggett	John Smith
Geo. W. Slocum	Abiel Holbrook
R Veitch	Jonah Thompson
John McEwen	Robt. Brocket,
G? W. Paysons	Wm Herbert
Adam Lynn	R Wood
Dwight Metcalf	W. E. Thompson
West Ashton	Thomas Bird.
Robt. Conway.	

To The Honourable The Senate and House of Representatives of the United States of America in Congress assembled.

It being stated to us the subscribing members of the board of Aldermen and of the board of Common Council of the

Corporation of George Town: That as Congress are now acting on The Bill to extend the Jurisdiction of the Justices of the peace for The District of Columbia it would be right and proper for us (as There is not time to have The wishes of The people of The town ascertained by a town meeting, to State to Congress That in our opinion a very large majority of The people of The town are favorable to The extension—and That it would be proper That The Justices of The peace at The request of either party should be authorised to Summon a Jury to try any Case that may be before them on a warrant upon the debt—exceeds twenty dollars.

John Kurtz David English Dan Bussard James A. Magruder Nimian Magruder	Aldermen.
Jere W. Bronaugh Wm Hayman, Jr Rom^{e} Riggs John Pickrell Daniel Kurtz John Posebe John Nathan	Members of the Board of Common Council.

To the Senate of the United States

The Memorial of the undersigned Citizens of Washington, repsectfully represents,

That the duties now assigned to the Justices of the Peace and Constables, within the District of Columbia, are fully commensurate with the competency and responsibility of such a tribunal: That the extended jurisdiction proposed to be given by the Bill now before the Senate would not, in their opinion, promote the public good: And that the Jury Trial, therein provided, has no tendency to subserve the purposes for which it was designed, and may be productive of great inconvenience and abuse.

Wherefore your memorialists pray that the Bill extending the jurisdiction of Justices of the Peace may not pass.

Washington Feby. 1823.

W. Jones
Thomas Munroe
Geo Sweeney
Jno Bailey
Sam Fitzhugh
Andrew Coyle
W Bradley
John MacLeod
Chauncey Barstow
Jonathan Elliott
Wm G. Elliott
Stephen M Gray
Jo Haskell
Jos Taylor
David Shoemaker
Thos Arbuckle
John Brannan
D. M. Berry
J. T. Frost
Overton Carr
Saml. S. Hamilton
J. F. Caldwell
Henry Hillman
E. D. Krafft
Moses Poore
Benjamin Bunn
John Trapp
M Bayley
Fleet Smith
E. B. Caldwell
Saml Turner, Jr.
Jno McDonald
Fredk Valley
J Coyle
Lewis H. Macken.

Letter to Hon. William Smith of the Senate, Washington City.

Alexandria 20th February, 1823.

Dear Sir:

I take the liberty to enclose to you another memorial from a number of the citizens of this place—among whom are some of our most distinguished Lawyers—and some of the Justices of the peace of this county, which memorial you will oblige us by laying before the Senate. The object of the passage of the Memorial is to prevent if we can ^ the bill now before you for extending the Jurisdiction of the Justices of the peace from twenty to fifty dollars. The bill is very defective in its details and as it now stands calculated to be instrumental of much mischief and inconvenience.

I also take the liberty of enclosing to you a statement which will shew what will be the costs in ordinary cases in the court here where the parties do not delay their cases and keep them in court year after year by continuances—and what will be the costs under the bill proposed to Sec passed into a law.

I hope the Senate if they pass the bill will amend it in the parts within mentioned in the memorial.

I am dear Smith with
respect
Your mo: obd. servt.
Edw. J. Lee.

A much larger number of petitions could have been procured to the paper sent if there was time for it. Those who have signed the memorial declare that the general opinion of the people here is adverse to it.

Ed: J. Lee.

To the Honorable the Senate of the United States.

The petition & remonstrance of the undersigned citizens of the Town of Alexandria in the District of Columbia, most respectfully represent—That they have very serious & in their opinion very solid objections to the passage of the Bill, which is now depending before the Senate for the extension of the jurisdiction of the justices of the peace in the District of Columbia from twenty to fifty dollars.

Your memoralists consider that to give a justice exclusive jurisdiction in this description of cases is not only a violation of the true intent & meaning of the Constitution, which requires a trial by jury in all cases where the value in controversy exceeds twenty Dollars, but it deprives the party of the right to bring originally his case of fifty dollars value before a more competent tribunal. The Bill proposes to change a principle of Jurisprudence, to which the people of Alexandria have been long attached, & which has existed in Virginia from the foundation of the Commonwealth. Your memoralists are unwilling that so important a change in their judicial rights should be made so suddenly, expecially when no great public benefit is to result from the alteration. If the Bill be right in its main principle yet

it is very defective in its details. It will not expedite the recovery of debts, nor diminish the expense attendant thereon, but on the contrary will delay the one & increase the other.

It will not lessen the expense & inconvenience to the poorer class of the community but will place that portion of society in the exclusive power of a set of Officers, whose interest it will be to multiply petty litigations, & who even if perfectly disinterested will in too many instances make their crude notions of law & equity the rule of their decisions. The Bill excludes the Creditor from the right of bringing his case before a tribunal rendered competent by their legal acquirements unless he will first subject himself to the delay & expense of a trial before a Justice of the peace, after which he may take his case to the Circuit Court and there run the risque of being charged with the costs of a second jury & of a second trial.

Among the many objections to the Bill we will point out the following—

1st. If a jury be required & one summoned, there is no power vested in the magistrate to coerce the jurors to attend. The remuneration allowed the Jury is too inconsiderable & there is no provision declaring how that shall be paid, nor is the magistrate authorized to charge the unsuccessful party with the costs of the trial—

2nd. The law does not authorize the venire facias to be returned before any other justice of the peace than he who issued it.

3rd. The section of the Law, which directs that the executions shall be no longer issued from the Office of the Clerk of the Court & that the Justices are to retain the papers & issue the executions, will be productive of great public inconvenience, which the act of Congress passed in 1802 Vol. 6th page 178 was intended to remedy.—

4th. There is no provision made by the Bill for defraying the expense of the room where the Juries which may be assembled before a magistrate are to set (as there may be a dozen of these Juries in session at once in each County, who could not be accommodated in the Court room of the County) unless it be intended that the Justice of the peace before whom the trial is had shall at his own expense furnish the room for the Jury. If this be the intention, it had

better be plainly expressed, otherwise the Justice will be apt to tax the parties with these costs.–

5th. Your memorialists consider the trial by Jury as given by this Bill, the mere shadow of the Jury trial, or worse than not having such a trial at all. They would, were it consistent with the constitution, prefer the decision of a single magistrate to the verdict of such a Jury or a Constable will be able to collect under the provisions of this Bill.

If the Magistrates have no power to compel the attendance of persons summoned whose compensation when empanneled is to be the paltry one of a single ninepence, what kind of a Jury will the weight & authority of a Constable be able to procure? Your memorialists are well assured that the Jury will generally be composed of the most indifferent of the community. Your memorialists most respectfully press upon your Honorable body the enquiry, what possible public good can result by changing the law of Congress passed in 1802 which required the magistrates to return their warrants & Judgments to the Clerk's Office, whence executions are by that Law to be issued & there returned & preserved for future use. On the contrary will not great public inconvenience, trouble & loss result from the change? The chance of loosing & misplacing papers by Justices of the Peace is much greater than exists in such an Office as that of the Clerk of a Court.–

All of which is respectfully submitted.

John Neill.

Edw J Lee	Beckwith B. Ashton
A Moore	Colin Auld
D Minor	Sam B Larmaur
I am opposed to the Bill– Thos Swann	Robt W Scott
M. Bayly, Jr	Jno C Vowell
Robt. Conway	John Hooff
Zes Garden	Alex Mackenzie
Wm Rhodes	Edwd T Farish
Jacob Hoffman	C P Thompson
P R Fendall	W E Thompson
George Drinkler	Thomas W Hewitt
Richd H. Little	D L McKenna
Jno Popham	Wm A McRea
Benj. C. Ashton	George Taylor Jr.

Chas C Lee
Geo Coleman
Jno A Parker
N Herbert
H Clagett
Peter B Beverley
Thomas Cresse
Thos Vowell
J Sanderson
R Veitch
John C Mandell
S Snowden
Geo. S. Hough
Robinson G Hough
West Ashton
William Washington
Russel Stevens
Wm G Cranch
Bernard Bryan
Jas M McRea
W. M Norgan
Benj C Wood
Saml Simmons
J R Markwand
Jas L Greer
John C Groverman
E Massoletio
Dan McLoud
John Lausan
J H Duffey
William Lyle
Jos F Hallowell
Joseph C Marbury
Jas McKenzie
Jas P. Martin
Thos L. Martin
Joh A Stewart
Bern Hooe, Jr

Gentlemen of the Committee in the Senate of the U. S. of the Petition of the Majistrates in the District of Colum[a]

Permit us to explain to you, presuming that you may not have, a perfect recollection on the subject, the difference, in the manner of practice, in the collection of small Debts in the Counties of Washington and Alexandria in the District of Col[a]

At the time that Congress assumed the Jurisdiction of the District of Columbia, they adopted (as is no doubt within your recollection) the Laws of the State of Maryland, as they then stood, to be in force in Washington County – and the Laws of the State of Virginia to be in force in the County of Alexandria; fixing, at the same time the extent of the Jurisdiction of a single Justice to Twenty dollars.

The Jurisdiction, at the time of the assumption, of a single Justice, in the State of Maryland was £10 M[d]. Currency, with an appellant Jurisdiction to the County Court, for all sums over twenty shillings by the Judgement of a

single magistrate – The Jurisdiction at the time, of a single Justice in the State of Virginia, was $5.00 only without an appeal – that consequently, under the present law, no appeal can be had from the Judgement of a single majistrate in the County of Alexandria, however arbitrary it may be – Neither is there any stay of execution after judgment, by supersedeas in the County of Alexandria as is the practice in the County of Washington – which opperates, at many times, much to the prejudice of Poor Persons. by taking from them every-
they
thing that possess which relates to the conveniences of life,
before they can look around to get relief.

The majistrates of the State of Virginia not being allowed any compensation for their services Congress enacted, that the Majistrates for the County of Alexandria should receive the same fees as was allowed the Majistrates in the State of Maryland.

The Constables fees in the County of Alexandria is not more than two thirds as much for the same services, as the Constables are allowed in the County of Washington.

A process for debt, in the County of Washington, requires that the Constable, shall arrest the Defendant, and keep him into his custody—(if not he is made liable for the amount of the debt) until a trial shall be had.

A Process in the County of Alexandria requires that the Constable, summons the defendant to appear before the Majistrate, and an neglect to attend—Judgement is rendered against him by default.

James M. Varnum.

The foregoing is believed to be correct.
by J. M. V.

Committee on part of the Majistrates of the
District of Columbia.

The practice of the Clerk of the County issuing on the Judgements of Majistrates in the County of Washington is attended with great inconvenience & very often total loss of the Debt & Cost in that part of the County including George Town—to the knowledge of the subscriber several Hundred Dollars have been lost since he has been in commission owing to this practice—The Clerks Office being situated near three miles from this section of the County, it is fre-

quently impossible to procure an issue in time to detain the Defend't after Judgement; to which may be added the loss of time in going & returning with the Precept—The subscriber believes in no other part of the United States is the Clerk of the County vested with authority to issue on the Judgements of the Magistrates and believes the present practice was adopted at a time when the Magistrates received no compensation or *fees* of Office.—The People of this section of the County have several times petitioned for a repeal of the Practice above complained of, but owing to some other and causes unknown grievances petitioned for in the same paper, have not been relieved of this.

John Ott.

I am confident that the above statement is correct.

James M Varnum.

The costs in a suit brought in the Circuit Court of Alexandria County from the issuing of the Writ to the issuing of an Execution, where no counsel is employed and the defendant not held to bail.—

Capias 18 docketting suit 8 entereing return of Writ 18.		$ .44
filing declaration 18 Order 26 rule to appear 35.....		.79
Order 26 Writ of Inquiry 18.....		.44
Entering up Judgment 18 Copy 18 taxing costs 20	1.34	
Copy 20 filing the papers 18 Execution 40	3.01	
Marshal's fee for serving Writ.....		.50
		$3.51

Costs in a case where the Plaintiff employs Counsel and the defendant not held to bail.–

Capias 18 docketting 8 entering Attorney 8 entering return 18.....		.52
filing declaration 18 Order 26 Rule 35.....		.79
Order 26 Writ of Inquiry 18.....		.44
Entering Judgment 18 Copy 18 taxing Costs 20	1.34	
copy 20 filing papers 18 Execution 40.....	3.09	
Attorney's fee		5.00
Marshal's do		.50
		8.59

Costs in a case where both parties employ Counsel and the defendant is not held to bail.—

Capias 18 docketting 8 entering Attorney 8 return 18 filinf declaration 18	$ .70
Order 26 rule 35, Order 26 Writ of Inquiry 18 Order 26 to set aside Writ of Inquiry, Joinder to plea of defendant 18	1.49
Judgment 18 Copy 18 taxing costs 20 copy 20 filing papers 18 Execution 40	1.34
	3.53
Attorney's fee	5.00
Marshal's fee	.50
	$9.03

Costs in a Case where Counsel are employed, the defendant held to bail and a Jury empanneled–

Capias 18 docketting 8 Attorney 8 return 18 filing declaration 18	$ .70
Order 26 rule 35, Order 26 Writ of Inquiry 18	1.05
Order 26 Joinder 18 entering rule 35 special bail 18	.97
Swaring Jury 70 Bailiff 18	.88
entering Judgment 18 Copy 18 taxing costs 20 copy 20 filing papers 18 Execution 40	1.34
	$4.94
Attorney's fee	5.
Marshal's fee for serving Writ & empanneling Jury	1.55
	$11.49

The foregoing are the Plaintiffs costs in the different cases as stated.

The defendant's costs where Counsel is employed are	$ 5.52
When ther is no counsel, the defendant's costs are...	.52

As the law now exists in the County of Alexandria the costs which a Justice of the Peace is entitled to receive where no witnesses are summoned are as follows:—

To the Justices services	$ .58
To the Constables services	.50
If a Witness or Witnesses are summoned the Justice is entitled to receive in addition for each subpoena	.12½c
If the Witness is examined for each oath administered by the Justice to the witness	6 cts.
If the party who gets the warrant makes oath to his a/c	6
If a Witness is summ[d] the Constable's fees for sumg. each witness	.12½
to which is to be added the costs of Execution 25	
To which is to be added the costs authorised by the Bill pending before the Senate	.87½
making altogether	$2.57½
If a supersedeas Bond is given	$ .12½
If a Jury is required the Justice shall receive	.37½
the Constable	.37½
	.86½

The above are the costs if no witnesses are sum'd.

If summons is issued for a Witness to attend before the Jury the Magistrate will be entitled for the summons	.12½
For swearing the witness	6
the Constable for summoning the Witness	.12½
	$ .31
If the party who demands a Jury chooses to have Counsel his adversary, it is probable, will also be obliged to employ Counsel, which will increase the expense	5.00 / 2.57½
	$. 74

The preceeding is the expense, which by the provisions of the Bill may be incurred before a Justice of the Peace. But if the party who is unsuccessful, thinks proper to appeal to the Circuit Court he may do so, by doing so he may subject his opponent to an expense not less in am't than.. $3.51

$12.25

To the Honorable Senate of the United States.

Your petitioners have but recently heard of and seen a Bill which has passed the House of Representatives extending the Jurisdiction of the Justices of the Peace of the District of Columbia, under certain modifications.

Your petitioners are unwilling that at this late period of the Session, a Bill should be passed, which is to operate more particularly on the poorer class of the Society, and in which is involved a principle of very great moment, to wit whether the Jurisdiction of a single Justice of the peace can be extended constitutionally above Twenty Dollars, on which question there is a contrariety of opinions. Besides this general objection, the Bill itself is very defective in its details by no means calculated to effect a speedy recovery of small debts or to deminish expense.

Your Petitioners therefore pray that this Bill may not be passed into a Law, and that time may be allowed to digest and present to Congress a better Law on the subject. All which is respectfully submitted.

John Suter	Wm Minor
Jno Janney	Abiel Holbrook
John Miles Jr.	R C Mason
J. P. Thompson	John Hoffman
Thomas F. Mason	B Dangerfield
Jacob Morgan	John Thompson
E J Lee, Jr.	Henry Dangerfield
C Scott	Rob. Mandeville
R. P. Wood	Nath Battles
Robert Barry.	James Carson
Jno Roberts	J Muncaster
Jno Vassen	S Shaw

Newspaper Clipping.

"TO THE PUBLIC.

An Inflammatory Address which is issued *this morning* in a hand bill from the office of the Alexandria Gazette, demands our immediate notice. It is without *signature* and without *truth*. The *four* magistrates never signed or *recommended* a bill of the description with which they are charged.

Five magistrates, to wit: Robert Young, Abraham Faw, Joseph Dean, Richard Libby and Amos Alexander, in conjunction with the magistrates of Washington, signed a memorial which contained but a few lines, only asking congress to make such alteration in the mode of collecting small debts as in their judgment might seem proper and necessary. If their names were ever placed to such a bill it was done without their knowledge or consent. But if this publication is a *stratagem* to serve a present purpose under an expectation of producing its *effect* before time could be had to refute it, we trust that the object will be defeated and that our fellow-citizens will make the *enquiry* why this charge was circulated on the *morning of the election*? We suspect that the fear of loosing a fee of 25 cents went much nearer the heart of the gentleman whose sympathies appear to be so highly excited, than any apprehended violation of the constitution. If the object of the memorial had been to *increase* instrad of *diminish* the *Clerk's* fees we presume there would not have been any of these *very nice* objections. We must however content ourselves with merely declaring the publication to be false and which we shall, in our opinion, be able to make it appear is intended for the basest purposes, more fully when the documents in question shall be laid before the public. We have been taken by *surprise* and request our fellow-citizens to give a *right* construction to the object of the authors of the aforesaid hand bill and their abettors. Its nature and the moment selected for its introcduction to the citizens of Alexandria bespeak the design. No further comment at this time is requisite.

ABRAHAM FAW
JOSEPH DEAN
RICHARD LIBBY
AMOS ALEXANDER.

The Memorial of the undersigned inhabitants of the Town of Alexandria beg leave respectfully to represent to your Honorable Body, that they have seen with the liveliest emotions, a Bill before your Honorable Body extending the Jurisdiction of the Magistrates in the District of Columbia, in as much, as they believe it will both expedite Justice, and greatly lessen the expense in the attainment

thereof—that the Law would be a salutary one, and highly acceptable to the People—that it would lessen the burden of the debtor in defending, and facilitate their recoveries in prosecuting *their* just claims—That it would destroy that undue priviledge which the unjust Debtor now has over the creditor under the existing state of things, which enables him to protract recoveries for small sums, as long as for large ones, thereby compelling the creditor either to compromise at the will and pleasure of the Debtor or go to Law, and in the interim, to submit to every deprivation and distress—superadded to which in many cases *their* total inability to advance the required Fee for Attorney to commence a Suit for the prosecution of a bad debt, amounts to almost a denial of Justice.

It is well known to many of your Memoralists that suits have been instituted in the Court of the County where the Debt in controversy did not exceed $40 and yet the legal Fees taxed to the attorney alone, amounted to $15 To wit $5 against the drawer and $5 each against two endorsers, making $15 besides the expense of Clerk and other Fees in three distinct suits, and so in proportion for every endorser, when one Suit before a Single Magistrate would have subserved all the purposes of the many in Court.

Your Memorialists have learned with surprise that a Petition has been got up adverse to this Bill—a course as unlooked for as it is manifestly incompatible with the Public good, and that they have no hesitation in saying, as their well founded belief that 4–5 of the People of this Town are decidedly in favour of the passage of the Bill in Question, and that those with whom the opposition to it originated, they feel authorized in saying are particularly and personally interested therein.

Your Memorialists feel particularly gratified to observe in this Bill, a provision for debts under twenty Dollars, by giving power to the Magistrate to rule the defendant to give Bail. It having been heretofore a source of much evil and generally considered a Public grieveance.

Your Memorialists deem it their duty to state that so satisfied are they, that your Honorable Body would have exercised a sound and proper discretion in this matter, that they would not have even thought it necessary to trouble your Honorable Body with this Memorial but for fear that their silence upon the subject might imply an acquiescence

in the wishes of those whose Personal Interest (generally speaking) have induced them to sign one of an opposite character.

In Duty bound will ever pray &c &c &c.

John Butcher	Guy Atkinson
Chas M Knight	Jno Washingt on
A Deacons	R Withers.
J G Emerson	J. H Runnells
A M Small	Isaac George
Joseph Mandeville	David Carson
Robert C White	Saml B Larmour
Richard L Caine	Henry Dangerfield
Robert S Blackloch	John Green
Robt Hall	A P Gover
Thomas Irwin	Wm Dunlap
Th V Huck	Walter O'Neal
George Coryell	Joseph Dodds
Laurence Hill	Thos E Baird
Jas Sanderson	Wm Edgar
Wm Wilson	Wm Pomery
Wm Duffy	John Thompson
Samuel P Adams	Loughlin Masterson
Jno Corse	Thos Semmes
Peter Hewitt	Jas Corning
Wm True	Simon Dearborn
M Veitch	Edwd M Laughlin
J Swift	C Withers
Davis Bowie	John H Brodero
Hezekiah J Reeves	John Ball
C B ONeal	James Compton
John Longdon	Louis Beelar
James Thomas	James English
Samuel Baggett	Gadandus Hill
Chas Percal	Jason Kidwell
Wm Green	John Myers
Robt Gregg	John W Logan
Thos Shields.	William Coax
	E Spanougle
	John Tenison
	William M English
Thomas Taylor, Jr	Charles Koons
James Ratcliff	Jacob Douglas
B Young	John Carson

P Simpson	James Carson
William Washington	Alfred Bloxham
J. W. Howland	J M Smith
Anthony Rhodes	Moses O B Cawood
John Douglass	Benjamin Magee
Ricd. Cross	John Atwell
R L Degge	William Campbell
Anthony Cahmore	Saml Atwell
Ezra Lurch	Robt Moffett
Gerard Skidmore	Igas. Allen
Thomas Ansley	William Maclish
John Gir	H Wilbar
Frederick Koones	John Gemeny
Hugh Leddy	John Martin
Thomas Lowe	Andrew Bartle

This Memorial was not signed, from the belief that it would be most respectful to the Senate to omit any expression of opinion as to the Construction of the Constitution; and simply to state their conviction of the inexpediency of the measure.

To the Senate of the United States:

The Memorial and Remonstrance of the undersigned Citizens of Washington respectfully represents:

That considering the passage of any law, extending the jurisdiction of Justices of the Peace as obviously opposed by the provisions of the Constitution, or, if constitutional, as conflicting with that policy which would urge the adoption of a pure and safe administration of justice, they have hitherto refrained from expressing their views on the inexpediency of this measure. But having learned with great surprise that a bill for this object has actually passed the House of Representatives, and is now pending in the Senate, they can conceive that they would be wanting in duty to themselves, and a regard for the community of which they are members, should they longer forbear the expression of their earnest desire that this Bill may not become a law.

To a body, so enlightened as the Senate of the United States, they deem it wholly unnecessary to enter into a prolix

enumeration of the various reasons which might be urged against the Bill. They will content themselves by briefly presenting the following, as the most material.

1. That Judicial powers, which Congress are only authorized to vest in Judges to be appointed during good behavior, and whose salaries shall not be diminished during their continuance in Office, are proposed to be conferred on Justices, commissioned only for five years, and who receive no stated compensation; besides on Aldermen ex officio justices, elected by *the people* for two years.

2. That on general principles of policy alone, if the Constitutional objection were entitled to no weight, the powers of Justices of the peace ought not to be increased. Besides the extensive and indefinable powers which they now possess, as conservators of the peace, they, also, exercise jurisdiction in all personal demands to the amount of twenty dollars. This power is greater in proportion to the security against its improper exercise, than that of any functionary known to our Laws. A Justice of the Peace, authorized to decide according to "*Equity and the right of the matter*," has no guide but his conscience, no limitation but his will. So wide and unconfined in his discretion; so little subject to supervision or control, and so liable to abuse, that this petty despotism would be intollerable if not restricted to sums of an inconsiderable amount.

3. That the Jury trial provided in the 15th Section of the bill, as the foundation for the extended jurisdiction over twenty dollars, is not such as the Constitution secures. There can be no *Trial* by Jury without a Court in the unlimited exercise of Judicial power, competent to instruct, and to grant new trials.—But the Jury named in the bill appear to be the sole judges of law and fact. If the justice assume the right to instruct, his instructions are nugatory, because he is not invested with the power of granting new trials. From the judgment entered according to the ver-
dict of the Jury, an appeal may at the option of the Plaintiff or Defendant be carried to the Court, *where the whole proceedings are submitted anew to another Jury.* Whether this proceeding is in conformity to the provision of the Constitution that "no fact tried by a Jury shall be otherwise re-examined in any Court of the United States than according to the rules of the Common Law," is respectfully left to the determination of the Senate. But if the

proceedings were less irregular, what Justice could be expected from a Jury of twelve men, summoned, at the instant, when required, by a Constable, in whose discretion and impartiality the most perfect reliance appea rs to have been placed, since here all the forms usually deemed essential to prevent an improper pannel have been dispensed with, requires no sagacity to determine.

4. That the provision of the Bill which authorize the Magistrate to issue execution, receive returns, and keep the Doquet may lead to corrupt, fraudulent and collusive practices, without the possibility of detection.

5. That the only advantage which the advocate of this Bill can alledge in its favor is fallacious. By its enactment, the costs of litigation will be increased, not diminished. In a trial before the Justice the costs are more than half the amount of those before a Court; and to these, in a majority of cases, may be added the costs attending an appeal.

6. On the whole, whilst this Bill involves at least a doubtful Constitutional question, its passage would they conceive be productive of little good, and most extensive mischief.

Wherefore your memorialists pray that it may be postponed indefinitely.

These papers have been carefully compared with the originals.

The proper names (of signers to petitions), many of which are almost illegible in the originals, have been copied as nearly correct as possible.

The capitalizing, spelling, inserting and punctuation are an *exact* reproduction of the original papers, and are not errors of the typewriter operator.

WM. T. PAGE.

Words underlined in copy of newspaper clipping are in italics.

CERTIFICATE.

Clerk's Office, House of Representatives.
Washington, D. C., September 28, 1898.

I, Walter H. French, File Clerk of the House of Representatives, United States, hereby certify that the foregoing

typewritten pages numbered from 1 to 73, inclusive, contain true and correct copies of the bill No. 39 entitled "A Bill to extend the jurisdiction of Justices of the Peace, in the recovery of debts in the District of Columbia," and the amendments thereto agreed to by the House of Representatives, 17th Congress of the United States, and of the original memorials, petitions, and papers on file in this office in connection with said bill.

WALTER H. FRENCH,
File Clerk, House of Representatives,
United States.

By WM. T. PAGE,
Acting File Clerk.

To the Honorable the Senate of the United States of America:—

The petition and remonstrance of the undersigned citizens of the town of Alexandria in the District of Columbia, most respectfully represents:—That they have very serious and in their opinion solid objections to the passage of the bill depending which is now pending before the Senate for the extension of the jurisdiction of the justices of the peace in the District of Columbia from twenty to fifty dollars.

Your memorialists consider that to give a justice of the peace *exclusive* jurisdiction in this description of cases is not only a violation of the true intent and meaning of the Constitution which requires a trial by jury in all cases over twenty dollars, but it deprives the party of the right to bring his case of fifty dollars before a more competent tribunal. The bill proposes to change a principle of jurisprudence to which the people of Alexandria have been very long attached; which has existed in the State of Virginia since the foundation of the Commonwealth. Your memorialists are unwilling that so important a change should be made in their judicial rights as it were of a sudden.

If the bill is right in the main principle of it, yet it is very defective in the details. It will not expedite the recovery of debts nor diminish the expense, but both delay the recovery and increase the expense.

The first objection to the details of the bill, is that the magistrates jurisdiction is confined to such cases *only* where the creditor resides in the County of which the magistrate is a resident, who is called on to issue his warrant.

Second. The magistrate is bound to render his judgment according to what may be the law *existing* at the time of the trial in the District of Columbia, that is according to the law that is peculiar to this District. He is not left to decide according to the law of *the case*; which case may be governed by the law of the place where the debt was contracted.

Third. There is no authority given to the magistrate to proceed in the trial of the case if the party fails to appear after he has been served with a warrant.

Fourth. If a jury is required and one summoned there is no power to coerce their attendance. The compensation allowed the jury is too inadequate, and there is no provision declaring how the jury is to be paid; nor is there any provision authorizing the magistrate to tax the costs of the trial against the unsuccessful party.

Fifth. The law does not authorize the venire facias to be returned before any other justice of the peace than he who issues it.

Sixth. That section of the law which directs that the execution shall no longer be issued from the office of the Clerk of the Court and that the justices are to retain the papers and issue the executions, will be productive of great public inconvenience, which the act of Congress passed in 1802, 6th volume, page 178, was intended to remove.

Seventh. There is no provision made by the bill for defraying the expense of the room where the juries who may be assembled before the magistrates are to set; and there may be in each county a dozen of these juries in session at once, who could not be accommodated in the court room of the county.

Eighth. Your memorialists consider the trial by jury as given by the bill worse than not having a jury trial at all. They would were it consistent with the Constitution prefer a trial by a single magistrate to one by a jury such as a constable will be able to collect under this bill if it should be passed into a law.

All which your memorialists respectfully submit.

OFFICE OF THE SECRETARY OF THE SENATE
OF THE UNITED STATES.

I certify that the foregoing type-written paper hereto attached is a true and accurate copy of the original memorial on file in this Office with the exception of the names subscribed, which number, in all, forty-nine signers.

BENJ. S. PLATT,
Enrolling Clerk, U. S. Senate.

Sept. 20, 1898.